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LAW OF
LIGHT RAILWAYS.



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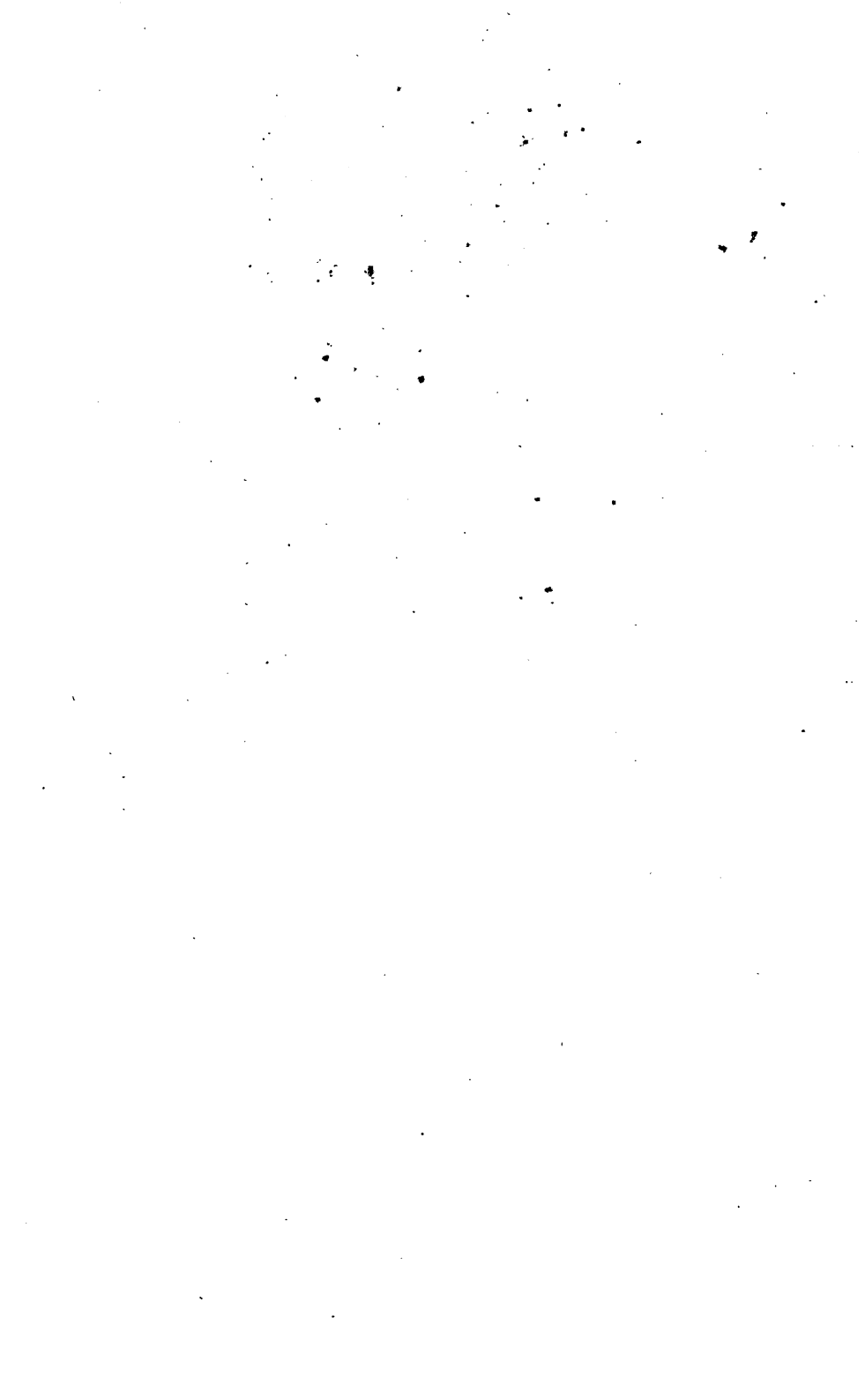
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THE LAW
RELATING TO
LIGHT RAILWAYS

COMPRISING
THE LIGHT RAILWAYS ACT, 1896,
TOGETHER WITH
THE ENACTMENTS RELATING THERETO
WITH NOTES AND INDEX.

ALSO
THE RULES MADE BY THE BOARD OF TRADE
AND THE
STANDING ORDERS APPLICABLE, ANNOTATED.

BY
CYRIL DODD, Q.C.,
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AND
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PREFACE.

THE scheme adopted by the Authors has been to deal in a series of short Chapters with the main features of the Act, and to point out the powers given by the Act, making from time to time suggestions as to what provisions it will be found necessary or convenient to have inserted in the Orders to be made by the Commissioners authorising light railways under the Act. These Chapters are followed by the Act itself, which is printed with short notes to the sections, and with the necessary references to the earlier portion of the book, to the rules of procedure made under the Act, and to the somewhat numerous statutes which it will be found necessary to consult in discussing or framing proposals for light railways under the Act.

The notes have intentionally been made as brief as the circumstances would permit, in order to avoid rendering a complete consideration of the Act as a whole difficult to the practitioner when dealing with schemes placed before him, or when before the Commission; and instead of repeating matter to be found elsewhere in the book, cross references have been inserted.

The Act is followed by a concise summary of the general purport of the Rules made under the Act, and then by the Rules themselves, briefly annotated.

Then follows an Appendix containing the important Acts which may be wholly or in part incorporated in Orders for light railways, and also those which will have to be consulted in framing or opposing schemes for railways

under the Act, or in constructing the lines after the scheme has been sanctioned. These, from the mode in which the Act is drafted, are necessarily somewhat numerous; but it is believed that all the more important will be found in the Appendix. The Act itself is so drawn as to leave to the Commissioners much discretion as to what enactments should be incorporated in their Orders, and as to how far in thus incorporating them their provisions should be modified or varied, though in the matter of the compulsory taking of lands their discretion is somewhat fettered by the provision forbidding variation of the clauses of the Lands Clauses Act, 1845, as to taking land otherwise than by agreement, a provision, it may be noted, which was not contained in the Bill as originally brought in by the Government.

It is intended by the Authors to provide a convenient book of reference for legal practitioners, members of councils, landowners, and others who may have to consider, promote, or oppose schemes for light railways, and to enable them to dispense with the necessity of having to consult numerous volumes in order to see the various Acts of Parliament bearing directly on the matter, and to afford by the notes, and by the cases referred to, some assistance in solving some of the more important of the difficulties that may arise in the practical working of the Act.

The Act itself points out in intelligible language with what modification the sections are to be applied to Scotland.

Of the value and importance of the Act there will be but little question, though it may be interesting to speculate as to how far the railways made under it will be or will become the property of the local councils as representing their communities, or as to how far existing railway companies will take advantage of the Act to extend their systems, or as to whether new companies will be formed in most instances to apply for and act under the powers afforded by the Act. The Act itself gives no special

preference to either of these methods, but is open to the adoption of all or any of them, or of a combination of them.

It is no part of the duty of the Authors to form any opinion as to which method is likely to be preferred, or is, in general, preferable, even if they had the means of so doing ; and they do not pretend to offer any opinion thereon.

It will, however, be of interest to mention that the Right Hon. W. L. JACKSON, M.P., Chairman of the Great Northern Railway Company, a gentleman of great experience and authority on railway matters, stated at a Conference convened to consider the question of Light Railways by the Board of Trade in 1894, that the general impression made upon his mind by what he learned with regard to light railways in Ireland during his period of office as Under-Secretary of State for Ireland, had been in no way altered by subsequent observation and consideration, and that was, that wherever arrangements could as conveniently be made that the lines to be constructed should be worked in connection with, and by the adjoining existing railway, as by any other means, that that arrangement should be adopted, and that in most instances an existing railway could make arrangements for the construction of the line more cheaply and more satisfactorily than an independent company, and generally work it more cheaply.

It may, perhaps, be added that the value of a light railway as a feeder to the company owning the main line should, in many instances, afford a powerful incentive to existing railway companies to render what assistance they can to well-considered schemes.

In Belgium, a country where lines similar to the proposed light railways are in successful operation, it may be noticed that the lines have been assisted or promoted by a national company formed for that purpose

(“Société Nationale des Chemins-de-fer Vicinaux”). See Report of Major Addison to the Board of Trade of December 4th, 1894.

In our own country the local councils will, from the success which has attended the management of tramways in the hands of municipal authorities, and from the course of legislation, which has lately been in the direction of granting to such authorities powers to construct and lease or work the tramways within their areas where the circumstances appear to require it, be, doubtless, encouraged in some localities to avail themselves of the opportunity afforded by the Act of constructing and controlling the working of the light lines for the benefit of the districts over which they have jurisdiction. And where this is not the case, they will generally be so far interested in the proposals made by others as to find it necessary to consider, and, perhaps, either to oppose or support the application to the Commissioners.

With regard to the general utility of such lines, we may usefully quote from a circular issued in Belgium by the Société Nationale des Chemins-de-fer Vicinaux, and adopted by the Prussian Minister of Public Works, in moving the third reading of the Light Railway Law, 1892 :—

Light railways will furnish the people with the means of transporting their products at the lowest possible price.

They will assist communication from village to village, and from the village to the adjacent station.

They will render access to the main lines more convenient.

They will call into being new industries, and increase the prosperity of existing industries, by affording them new outlets for their products.

They will enable the farmer to procure at a cheap rate the fertilisers necessary to enable him to face foreign

competition, and by the low cost of carriage will open to him the markets of his own country, as well as those abroad.

Journal No. 20, Royal Agricultural Society of England, p. 649.

With regard to the general value of the Act, much must undoubtedly depend upon the action of the Commissioners appointed, although the powers afforded by the Act itself of making railways of a cheaper class, and with less elaborate provision for the safety of the general public, than in the case of the existing standard lines, coupled with the provisions cheapening the cost of taking land, cannot, in any case, fail to be of use in many districts.

If the Act should be applied to tramways of every description, a very large use will undoubtedly be made of the Act. That the Act is capable of an interpretation wide enough to include all kinds of tramways can hardly be doubted; but the Authors would suppose that the Commissioners, with the sanction of the Board of Trade, will be disposed, in general, to limit the use of the Act to tramways worked by steam or electricity, or other similar means and which are in their nature equivalent to railways as now existing, rather than to extend it to horse lines acting as mere omnibuses. In the case of ordinary tramways in the streets of populous towns it is probable that promoters will still be left to the provisions of the Tramway Acts.

The Commissioners are "themselves, by local inquiry, and such other means as they think necessary," to "possess themselves of all such information as they may consider material or useful for determining the expediency" of granting the applications made to them for Orders under the Act (see section 7 of the Act, *post*, p. 64). The practical working of the Act depends largely upon the manner in which this requirement is carried out. The rules, which have been published by the Board of Trade, make

no regulation for, and contain no provisions in regard to, the mode in which it is proposed to fulfil this requirement of the Act, a requirement which is intended to be a cheaper and more expeditious method of acquiring the information needed than an inquiry before a Parliamentary Select Committee. It is presumed that the Commissioners will, in general publicly, though not necessarily so, hold an inquiry at some place within the area intended to be served by the proposed railway, and confine the investigation at such place to those matters which they deem of use to enable them to form a reliable judgment on the application before them, and to hearing such objectors or dealing with such objections as may be conveniently dealt with locally. And that they will not permit, under the above enactment, lengthy local trials involving all the questions that ingenuity can raise in regard to light railways, supported by numerous witnesses. The matter is, however, in their hands, and if it is permissible to the Authors to predict, they would say that the Commission is not likely to treat the language of this section as a direction compelling them to investigate locally any thing that can be better inquired into at the office of the Commission in London, or to receive in the shape of formal evidence, at cost to the parties, matter which needs no proof, or which can be furnished to them inexpensively in writing at their offices for their consideration. Their statutory functions would appear to present many points of difference from those of a judicial tribunal appointed to decide between opposing parties, and, subject to the special provisions of the Light Railways Act, 1896, to resemble to a considerable extent those in general of a Parliamentary Committee. Their exact description is that of a Commission appointed by the statute.

C. D.

C. E. A.

TEMPLE,
November, 1896.

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THE LIGHT RAILWAYS ACT, 1896.

CHAPTER I.

Chap. 1.

GENERAL VIEW OF THE ACT.

THE object of this Act, as appears by reference to the Object of Act.
Act itself, is to facilitate the construction of light railways.

The Act is intituled "An Act to facilitate the Construction of Light Railways in Great Britain," and it enacts by section 1 (1) (2) that a Commission shall be appointed for the purpose of facilitating the construction of such railways, and that it shall be the duty of the Commissioners to carry the Act into effect, and to offer, so far as they are able, every facility for considering and maturing proposals to construct light railways.

No definition is given by the Act of what constitutes "a No definition of light railway.
light railway," but the responsibility of determining to what cases the Act may be applied would seem to be placed ultimately by sections 9 and 10 upon the Board of Trade. Some assistance may be afforded upon the question of what is meant by the term "light railway" by previous legislation.

The Regulation of Railways Act, 1868, contains provisions enabling the Board of Trade to grant licenses to Meaning in 31 & 32 Vict. c. 119.
railway companies or others owning, leasing, or working railways, to work the whole or part of their line as a light railway under certain conditions and regulations (sections 27—29 of that Act, *post*, p. 245), and though, as in the case of the Light Railways Act, there is no definition in that Act of the expression "light railway," that Act

Chap. 1. contains provision that the regulations to which light railways constructed or worked under that Act are to be subject shall not authorise a greater weight than eight tons to be brought by any one pair of wheels upon the rails, and that the speed of the trains shall not at any time exceed twenty-five miles an hour. Though these provisions are not applicable to railways under the Light Railways Act, except so far as the order authorising the railway may apply them thereto, yet from the fact that they may be so applied, and from the indication they afford of what at the time was considered by the Legislature as a light railway they are of importance in enabling an opinion to be formed of what is meant in the Light Railways Act by the expression "light railway."

Meaning
in Irish
Acts.

The Acts relating to Ireland also afford assistance in arriving at the meaning of that expression. The Tramways (Ireland) Amendment Act, 1881, permitted a steam tramway to be authorised to run at a speed not greater than ten miles an hour in country districts or through a town or village at a speed not greater than six miles an hour. The Tramways and Public Companies (Ireland) Act, 1883, passed not long afterwards, gave the Board of Trade power by order to authorise a speed not exceeding twelve miles an hour elsewhere than through any town or village, and also enacted that where the tramway was more than thirty feet distant from the centre of the public road the limits of speed prescribed by that Act or by the Tramways (Ireland) Acts were not to apply.

Includes
steam
tramway.

In the Light Railways (Ireland) Act, 1889, the expression "light railway" is declared to be used therein, except where the context may prohibit such use, to include "tramway" as that word is used in the Tramways (Ireland) Acts. Consequently in Ireland the expression "light railway" may include a steam tramway. And it would seem clear that under the Light Railways Act, 1896, itself a steam tramway would well fall within the expression "light railway" as there used, so that the procedure given

by that Act will be applicable for the promotion as well of **Chap. 1.**
 steam tramways as of light railways of the type more
 commonly described under the title of "light railway."

The Light Railways Act contains no provision to the effect that the speed must be limited upon the light railways made under it, or that the weight of the engines or carriages is to be restricted, but the general idea of a light railway made with a relaxation of many of the more expensive provisions required in the case of ordinary railways for the greater safety of the public, would seem to be of one where a lower rate of speed is used, and where, consequently, a lighter equipment is possible and sufficient, and this view is strengthened by a consideration of the action of the Legislature as shown in the enactments above referred to.

A light railway would, therefore, seem in general to be one where a lower rate of speed is used, and where a lighter equipment is permitted or required, but at the same time it must not be forgotten that the Light Railways Act has been framed intentionally without any definition of what is the precise meaning of the phrase "light railway," in order that the powers of the Commissioners may not be unduly restricted, and that it has been thought by the Legislature sufficient to give to the Board of Trade the power of refusing to confirm the order which appears in section 9 of the Light Railways Act (*post*, p. 67). Board of Trade to determine.

The above considerations will, it is supposed, be present to the Board of Trade in determining what is a light railway, though no doubt it is not untrue to say, that that is a "light railway" under the Light Railways Act which that Board allows so to be.

In the absence of any direction in the Light Railways Act, it will be for the Commissioners, subject to the control of the Board of Trade, and having regard to the safety of the public, to determine either in each case, or by some general rule or order to be made, what limit (if any) of speed, of weight of carriages or engines, or what other Limit of speed and weight.

Chap. 1. requirements or limitations should be imposed upon light railways made under the Light Railways Act. At first probably it will be found convenient to deal with each case on its particular circumstances rather than to lay down any hard-and-fast rules for such matters, and probably it will be considered by those constructing light railways preferable to obtain, if possible, orders permitting of considerable latitude, or of ready modification in the future, in the matter of the speed at which it may be lawful to run trains. An order following the lines suggested by the above Irish Acts putting a maximum of speed allowable without an order from the Board of Trade, and also giving a power to the Board of Trade to increase such maximum from time to time if it should appear advisable would be a permissible form of order, and might be found in many cases a satisfactory one.

Light rail-
way to be
authorised
by order.

The Light Railways Act in order to carry out its object of facilitating the construction of light railways, enables such railways as come within its purview, to be made without any application to Parliament for a special Act, substituting therefor an order authorising the railway, which, upon confirmation by the Board of Trade, is by section 10 to have effect as if enacted by Parliament.

Applica-
tion of
general
Acts.

In other words, the order of the Commissioners duly made becomes on confirmation by the Board of Trade equivalent to a special Act of Parliament. The general enactments relating to railways are, many of them, applicable to light railways made under the Light Railways Act, but the provisions of that Act exempt such lines from being subject to certain enactments relating to safety, or to those of the group of Acts usually incorporated with the special Acts of ordinary railways known as the Clauses Acts, except so far as they are applied by the order authorising the railway. The Passenger Duty Act also is not to be applicable to light railways under the Light Railways Act.

Subject to the above exceptions, and to any special

provisions contained in the order authorising the light railway, the general enactments relating to railways will apply to light railways made under the Light Railways Act. Light Railways Act, s. 12, *post*, p. 70. It is expressly stated in section 11 (*a*), *post*, p. 68, that the order may incorporate, subject to such exceptions and variations as may be mentioned in the order, all or any of the *Clauses Acts*, subject, however, to certain restrictions as to varying the *Lands Clauses Acts*. And with regard to the enactments as to safety specified in the Second Schedule of the Light Railways Act, the intention of the Light Railways Act appears to be that their provisions should be applied to light railways by the order so far only as the condition of the locality through which the line runs, or the character of railway intended to be made, or the mode in which it is proposed to be worked, renders such application reasonably necessary. Section 11 (*b*), *post*, p. 68.

The object of the Act in leaving the extent to which the *Clauses Acts* are to be incorporated to be determined in each particular case in settling the order, as also that to which the enactments in the Second Schedule as to safety are to be applied, is doubtless to permit the railways to be as cheaply constructed as circumstances may fairly permit.

The power thus given of making exceptions and variations in enactments incorporated would seem to permit of any alterations not inconsistent with the general scope of the enactment incorporated, or of the Light Railways Act itself. An example, which may be found of use, of the mode in which general enactments relating to railways have been applied by subsequent legislation with variations and subject to specified provisions, occurs in the Railways Construction Facilities Act, 1864, s. 51, Appendix, *post*.

The application for an order authorising a railway is to be made to the Light Railway Commissioners—a new Commission established to carry out the Act. See sections 1 and 2 of the Light Railways Act. The application to

Chap. 1.

Incorporation of Clauses Acts.

Variation of general Acts.

Application for order.

Chap. 1. those Commissioners may be made by any county council, district council, or the council of any borough, or by any individual, corporation, or company, or jointly by any combination of the above. Section 2 of Light Railways Act, *post*, p. 60.

Procedure
before
applica-
tion.

The Board of Trade may by section 15 (2) of the Light Railways Act make such rules as they think fit for regulating the procedure under that Act, whether before the Board of Trade, or before the Light Railway Commissioners, and any other matters which they may think expedient to regulate by rule for the purpose of carrying that Act into effect.

They are also expressly authorised by section 7 (2), *post*, p. 64, to prescribe by rules the form of the plan and book of reference to be adopted, and the manner in which notice is to be served on reputed owners, lessees, and occupiers of lands proposed to be taken. In accordance with these powers the Board of Trade have made a code of rules which affords full and explicit directions which must be followed where a scheme has been matured, and it is intended to make a formal application for an order. They are mainly founded upon the Standing Orders of Parliament applicable to private bills for railways, and will be found at length, *post*, pp. 87—95, with a schedule giving the form of notice to be given to owners, &c., *post*, p. 96.

Before the formal application, it will be permissible, where necessary, to communicate with the Commissioners in writing, as specified in Rule 31, *post*, p. 95. See also the note to the rules, *post*, p. 87, and also the observations, *ante*, p. 1. The formal application itself after the required notices have been served and the local authorities, including road authorities, consulted, must in the year 1896 be made in the month of December, and in other years in either May or November, Rule 27, *post*, p. 93.

Landowners will, in most instances, be willing to assist in the construction of a light railway, and applicants

should endeavour in all cases as far as possible to obtain their assent and co-operation. Indeed, without their practical assistance by free grant of land or otherwise, no special advance will be made by the Treasury. Section 5, *post*, p. 62. It may often be found useful for applicants prior to making the application for an order to enter into contracts with landowners to purchase their land, provided the scheme is authorised by an order. Chap. 1.

Such conditional contracts entered into by an existing railway company about to apply for an order authorising it to make a light railway are valid, and bind the company if it obtains the order (see *Eastern Counties Railway Company v. Hawkes*, 5 H. L. 331 ; *Taylor v. Chichester Railway Company*, L. R. 4 H. L. 628) ; but it may perhaps be open to doubt whether a public authority such as a county or district council is authorised to enter into such arrangements before obtaining power to construct a line, and it would seem well to provide for this difficulty by obtaining a provision in the order, that such provisional contracts, or that certain named ones should be valid and binding. The provision might, following the lines of section 30 of the Railways Construction Facilities Act, 1864 (*Appendix, post*), run somewhat as follows:—"Contracts relative to the purchase or taking of lands, or for payment of any compensation in regard thereto, payable under this order or any enactment relating to the said railway, or for the payment of any compensation recoverable for injurious affection entered into by [*stating whom*] shall be as binding on [*the applicants*] as if they had been entered into by them after the making of this order."

Before the Light Railway Commissioners decide on an application, they must give a full opportunity for any objections to be laid before them, and must consider all such objections. Section 7 (2), *post*, p. 64.

There is no provision in the Act as to who may thus object, but it is presumed that but little regard would be had to objections by persons having no interest or real concern Objections to applications.

Chap. 1. in the matter in hand. On the other hand, it seems obvious that all who have an interest or real concern in the decision are entitled to lay their objections before the Commissioners. Probably the Commissioners will give objectors an opportunity of being heard and of producing evidence, and will also receive and consider written objections. Section 7, and Rules 2 and 31, *post*, pp. 64, 87, 95, and see Introduction, *ante*.

Settling
the order.

The Light Railway Commissioners, after hearing and considering the objections, will have the duty of settling the draft order authorising the railway, if they decide to grant the application. Section 7 (3).

The order should have regard to the circumstances of each case, and should contain such provisions as the case may seem to require for the safety of the public. Section 9 (4), *post*, p. 67. It may, so far as is consistent with the general scope and provisions of the Light Railways Act, contain provisions for the matters stated in section 11. See the notes to that section, *post*, p. 69. As before mentioned, all general Acts other than the Clauses Acts, as defined by section 28 of the Light Railways Act, *post*, p. 81, and other than the enactments as to safety specified in the Second Schedule to the Light Railways Act, are applied to light railways by section 12, subject to the previous provisions of the Act, and to any special provisions contained in the order (section 12 (2)), with the exception of the Act as to passenger duties. Section 12 (2), *post*, p. 70.

Construc-
tion of
order.

Where the order contains a provision inconsistent with a provision in one of such general Acts, the provision in the general Act is to be regarded as superseded by the order, but where both can stand together, then there is no inconsistency, and no supersession or repeal can be implied. See Maxwell on "Statutes," 3rd edit., p. 214. To avoid questions which may be of difficulty as to what is thus inconsistent, it would seem advisable to exclude by express statement those portions of enactments which it is intended should be excluded, rather than to trust to the inconsistency

of the two provisions. It would appear inconvenient to permit any important or fundamental differences to exist between the legal liabilities or duties of light railway companies, and those of ordinary railway companies to their passengers, or to their customers, or to the public. It is further open to considerable doubt how far the Light Railways Act authorises such fundamental changes to be effected by an order, and it is accordingly supposed that the general law relating to these matters will not be substantially altered by the orders, but that the attention of the Commissioners will rather be directed to changes which allow such expenses to be avoided, or such precautions to be omitted in localities served by the light railways, as may seem to the Light Railway Commissioners to be, in such localities and upon such lines, almost or entirely unnecessary, than to the consideration of fundamental changes in the laws applicable to carriage by railway or to the liability of railway companies.

Chap. 1.

Variation
of general
law.

The power of varying the law by the orders which is entrusted to the Light Railway Commissioners is subject to the confirmation of the Board of Trade as hereinafter pointed out. It is also limited by the requirements of section 11, *post*, p. 68, and must be exercised in a manner consistent with the Light Railways Act.

The Light Railway Commissioners, if they decide in favour of the application, will settle the draft order submitted to them by the applicants and submit it, thus settled, to the Board of Trade for confirmation. Sections 7, 8 (1), *post*, p. 64. That Board has then to give public notice of the order, and to state in the notice that objections to the confirmation of the order must be lodged within a specified time with the board. Section 8 (2).

Submitting order
to Board
of Trade.

The persons or bodies who have already objected before the Light Railway Commissioners may again object, and raise the same objections, or new ones, as they may think fit, but it is in no sense a condition that the persons or bodies objecting at this stage should also have objected at

Objections
to confirm-
ing order.

Chap. 1. the earlier stage before the Light Railway Commissioners.

At the same time an objection, which could have been made at the first stage, and was not, would come with less grace, or be made perhaps at a disadvantage after the applicants had been permitted, without objection, to incur the expense of so far proceeding with their scheme.

Duty of
Board of
Trade.

Whether objections are lodged with the Board of Trade, or not, that Board has to consider the draft order with special reference to the expediency of requiring the proposals to be submitted to Parliament, and to the safety of the public. Section 9 (1) (a), (b), *post*, p. 67. If objections are lodged they too must be considered. Section 9 (1) (c).

Submit-
ting
scheme to
Parlia-
ment.

The principles on which the Board is to determine the question of the expediency of requiring the proposals to be submitted to Parliament appear from section 9 (3), to be when the undertaking seems to be of such magnitude, or so seriously to affect an existing railway company, that it ought in their opinion to be submitted to Parliament, or when for any other special reason relating to the undertaking they arrive at that opinion. The Board, whether objections are lodged or not, may either require the proposals to be submitted to Parliament, in which case the confirmation of the order is refused by the Board, or they may remit the order to the Light Railway Commissioners for further consideration, or they may themselves modify the order, or they may confirm the order without alteration, or modification.

Hearing
objections.

If an objection is lodged, and the Board after consideration considers that it should be upheld, it is their duty to refuse to confirm the order, or to modify the order so as to remove the objection. Section 9 (5).

The Act does not itself prescribe any procedure to be followed by the Board of Trade in considering objections, but section 15 (2) gives to the Board a power of making rules regulating such procedure, and the Act in section 15 (1) appears to anticipate that in some cases, at any rate, a local inquiry will be held by the Board, and

applies, with the necessary modifications, to such local Chap. 1.
 inquiries the provisions of Part I. of the Board of Trade
 Arbitrations, &c., Act, 1874 (37 & 38 Vict. c. 40, ss. 2—4),
post, Appendix. It does not seem obligatory on the Board
 of Trade to hold a local inquiry in all cases where there Local
 are objections, as, for instance, where neither the objectors inquiries.
 nor the applicants for the order desire to produce local
 evidence, and the Board has all the local information it
 requires, so that the ultimate dispute depends upon matters
 of argument on admitted facts, or upon matters of law or
 the like, or where they consider such an inquiry wholly
 useless.

Upon such inquiry by the Board of Trade, it is pre- Attend-
 sumed counsel and solicitors will be permitted to attend, ance of
 either on behalf of the applicants for the confirmation of counsel
 the order, or on behalf of the objectors, though there upon local
 does not appear to be any right to compel the Board to inquiries.
 allow of their attendance or to hear them. The express
 power given to the Board to limit the cases in which
 counsel are to be allowed by section 13 (2) of the Act
 applies to arbitrations for settling compensation or pur-
 chase money, and not to the proceedings before the Light
 Railway Commissioners or before the Board of Trade.
 The extent to which counsel or solicitors attending are
 to take part in the proceedings by cross-examining wit-
 nesses produced by other parties, in the absence of regula-
 tions by the Board of Trade, would seem to be a matter
 for the decision of the official holding the inquiry as
 representing the Board, subject, however, to the power of
 the High Court to order a further inquiry if a fair hearing
 has not been afforded to an objection properly put forward,
 and the matter has been improperly closed.

The attendance of counsel or solicitors upon the applica- Attend-
 tion to the Commissioners for an order authorising a railway ance of
 or upon its desired confirmation by the Board of Trade is counsel or
 not expressly provided for by the Act, following in this the solicitors.
 present law with regard to the attendance before Select

Chap. 1. Committees of Parliament upon the applications by ordinary railway companies for a special Act, but it was stated by the President of the Board of Trade during the discussions in the House of Commons upon the Light Railways Act that the intention was that they should be at liberty to attend in the same way as on such committees, and this intention will doubtless in practice be carried out. See *Times*, 5th June, 1896, and Introduction, *ante*.

Order to
have effect
of Act.

Any irregularity or failure to comply with the requirements of the Act for the obtaining of an order authorising the railway becomes unimportant as soon as the order has been actually obtained, as by section 10, the order, when confirmed by the Board of Trade, has effect as if enacted by Parliament, and affords conclusive evidence that all requirements of the Act have been complied with.

CHAPTER II.

COUNCILS, THEIR POWERS UNDER THE LIGHT RAILWAYS ACT.

Powers of
councils
generally.

THE council, whether of a county, district or borough, is a body incorporated for defined purposes of local government, and is unable to contract or enter into binding arrangements with regard to matters outside or beyond the scope of its incorporation. *Ashbury Company v. Riche*, L. R. 7 H. L. 653; *Wenlock v. River Dee Company*, 10 App. Cas. 354, 360, 362. Apart from the Light Railways Act, such bodies would have no power to construct, or work, or aid in the construction or working of a railway, or to enter into any contract with regard thereto, nor would they have any power to take shares in, or lend money to, any company constructing or working a railway. (*Ibid.*) All such matters are outside and beyond the scope and purpose of their original incorporation.

One of the clearly expressed objects of the Light Railways Act is to enable such bodies, under proper conditions and in proper cases, to construct and work, or construct, or work, or otherwise assist in the development of light railways for the benefit of the districts over which they have jurisdiction, and for this purpose provision is made in the Act for the granting to them of the necessary powers by orders under the Light Railways Act. Chap. 2.

Before a council can make, or join in making, an application for an order under the Light Railways Act, it is necessary that a special resolution should be passed by it in manner directed by the First Schedule to the Act, *post*, p. 82. It must be passed at a meeting of the council by a vote of not less than two-thirds of those present and voting, and a month's previous notice of the resolution proposed must be given, in the manner in which notices of the meetings of the council are usually given, before the meeting is held at which it is proposed. See the Act, s. 3 (2), and the First Schedule. Special resolution before application.

It will generally be the case in regard to borough councils, and often in regard to district or even in regard to county councils, that the desired line of railway will be in part outside the limits of the jurisdiction of any one council, and, consequently, provision was needed enabling a council to co-operate with other councils or with other bodies or individuals. Co-operating with others.

Such provision is to be found in sections 2 and 3 of the Act, coupled with some restrictions to prevent the enterprise of councils leading them into attempts to obtain orders permitting them to embark, at the risk of their rate-payers, in the making or working of railways outside their own particular areas to an extent beyond what is justified by the benefit which may be expected to accrue to their particular areas therefrom. Section 3 (2), (b), *post*, p. 61.

The Light Railway Commissioners would not, it is supposed, if the Act had contained no such restrictions,

Chap. 2. have granted to councils, bodies formed primarily for the better government of their areas, orders enabling them to embark the ratepayers' money in railways outside their districts, as commercial speculations, or for the general public benefit only ; but these restrictions make it plain that the object of councils in making, or working, or assisting in the making or working of lines extending beyond their particular districts should be, mainly at any rate, the advantage to their own particular areas. It is always to be borne in mind that the primary duty of a council is to its own district, and that it is not a trading or commercial body, except to the extent to which for the benefit of its area this Act enables it by means of an order to embark in light railway enterprise.

Railway
partly out-
side area.

Where the proposed railway is wholly or partly outside their area a council may not construct, or work, or contract for the construction or working of a light railway, or advance money for it except jointly with the council of the outside area, or if this co-operation of the latter council cannot be, or is not, obtained, with the sanction of the Board of Trade, who must be satisfied that the proposed action is expedient in the interests of the area of the first-mentioned council, and in either case, it would seem their expenditure must not be in excess of such amount as will, in the opinion of the Board of Trade, bear due proportion to the benefit which may be expected to accrue to their area. Section 3 (2) (*b*), *post*, p. 60. The Board of Trade would thus appear in all cases of councils engaging in light railway enterprise not wholly confined to the area of the particular council to be entitled to require proof that the council was not incurring a share of expense out of proportion to the share of the benefit of the area of the council. It is also to be observed that cases are contemplated by the Act where no portion of the line is in the area of the particular council, but where, notwithstanding it will benefit the area, and also cases where a council co-operates with a railway or other company whose proposed railway,

whether inside or outside, or partly inside and partly outside, will benefit the area. In fact, provision appears to be made for the co-operation of councils in all schemes that can fairly be said to benefit their particular areas, and for which the sanction of an order is obtained. Chap. 2.

In order to facilitate joint action on the part of councils in regard to applications for, or carrying out of orders under the Act, special provision is made for the appointment of joint committees for those purposes. Such a joint committee of two or more councils may be for any purpose in connection with a railway under the Act for which it is convenient that councils should combine. Section 17, *post*, p. 74. Joint committees.

Such a committee would frequently be found convenient for the purpose in the first instance of inquiring and reporting as to the feasibility of carrying out a particular scheme, or as to the respective merits of rival schemes suggested, or for deciding upon the propriety of making or joining in an application for an order, or in sifting the financial proposals made, or in consulting public authorities or landowners in regard to schemes suggested, or obtaining information as to the cost of land or as to other probable expenditure, or, indeed, in otherwise facilitating the formulation of definite proposals to be brought before the Light Railway Commissioners.

It would also, doubtless, where the application for an order is to be a joint one, or the order is to be jointly carried out, be often found advisable that this should be done by a joint committee of the councils interested.

The Act, as regards England and Wales, gives no such power of assisting in the development of light railways to parish councils as is given to the more important councils, namely, to those of counties, districts, and boroughs, but they may, perhaps, be "local authorities," and if so, they would, under section 7, have the right to be consulted before any application for a railway passing through their area is made, and it would seem, that before a special advance is made under Rights of parish councils

Chap. 2. section 5, their assistance should be sought. See section 7 (1), *post*, pp. 64, 65 ; section 5 (1) (a.) (c.), *post*, pp. 62, 63 ; and see Rule 3, *post*, p. 88. Resolutions in favour of a scheme, by parish councils through whose area the intended railway is to pass, will not be without weight before the Commissioners, and their objections to any scheme will, doubtless, be fully considered by them, or, in the cases of applications to the Treasury for advances, by the Lords of the Treasury. Section 5 (a.), (7), *post*, pp. 62, 64. A parish meeting may also pass resolutions in favour of or against a proposed scheme and transmit them to the Light Railway Commissioners, or Treasury, or Board of Trade, as the case may be, in the same way as the parish council ; for the power to discuss and pass resolutions on parish affairs given by the First Schedule to the Local Government Act, 1894, appears sufficient to enable them thus to consider a railway affecting their parish.

Parish
councils
opposing
orders.

It would, however, be *ultra vires* of such bodies to expend parish funds in assisting applications for orders, though where an order is sought which would prevent them from obtaining the usual rates from the railway when made, a parish council is entitled to expend money in resisting such order. Section 5 (a.) (c.), *post*, pp. 62, 63.

It may be that where parishes object to the insertion of provision thus depriving them of rates, the Treasury may, in general, decline to make a special advance, though, it would seem, the Commissioners would have power to insert such provision in spite of objection by the parishes. Probably if there were a general readiness exhibited by the parishes concerned to submit to the insertion of such provision, the Commissioners would not allow a small minority to override the general desire. It is, however, manifest, that unanimity is, as far as practicable, desirable on this matter.

Construc-
tion of
railway by
council.

Councils of counties, districts, or boroughs may, as before stated, if authorised by the order, themselves construct or work the railway, or, with the like authorisation,

make contracts for the construction of it by others on their behalf, or for the working of it by others on their behalf. Chap. 2.

They may obtain, by means of an order, power to the extent stated in the order to take shares in, or advance money by way of loan to the company or individuals who are constructing a light railway. Light Railways Act, ss. 3, 11, *post*, pp. 60, 68. Taking shares. Advances.

Where a council find it advisable to retain in their own hands the ownership of the railway but to employ contractors to make it, or to employ or arrange with an existing railway or other company to work the line, it will be necessary to consider in what form, or subject to what formalities, a council may legally contract. As above pointed out, the power of a council thus to contract will be derived from the Light Railways Act and the order made under it, so that the manner in which they should contract will depend upon the order. Power to contract.

It is the general rule of the common law that corporations can only contract under their common seal, and that contracts without the authorisation of such seal are not to be regarded as contracts of the corporation. This rule, however, has, from necessity, become subject to important exceptions. The first of the exceptions to the rule is in cases where the contracts are of continual occurrence and of trivial or comparatively trivial importance, so that to require for each of such contracts a seal would be impracticable. The second of such exceptions is when the contract must, from the very object of the incorporation of the body in question, be one which that body was intended to enter into. The third of such exceptions occurs in cases where by statutory enactment the corporation is authorised to contract otherwise than under seal. Corporations contract under seal.

Examples of these exceptions may be found in cases such as one where coals were sold to a board of guardians for use at their union workhouse, in which it was held, that for such a contract there was no need of a seal (*Nicholson v. Bradfield Union*, L. R. 1 Q. B. 620), and in an earlier case Exceptions.

Chap. 2. where a gas company purchased gas meters for their business, in which it was likewise held that a seal was not necessary to the validity of the contract. Similarly a gas company incorporated for the purpose of supplying gas was held to be entitled to sue for the breach of a contract made otherwise than under seal with one of its customers to take their gas. *Church v. Imperial Gas Company*, 6 A. & E. 846. So also a colliery company incorporated for the purpose of working collieries was held to be entitled to sue for the breach of a contract made without seal to supply it with an engine and certain machinery required for working a colliery. *South of Ireland Colliery Company v. Waddle*, L. R. 3 C. P. 463 ; L. R. 4 C. P. 617.

Councils
are incor-
porated.

The councils of counties, districts, and boroughs are all of them bodies corporate. County councils are incorporated by the Local Government Act, 1888, s. 79 (1), and in the expression "county council" the council of a county borough is included. Local Government Act, 1894, s. 75 (2). District councils for urban districts, if not previously incorporated, were incorporated by the Public Health Act, 1875, s. 7, as amended by the Local Government Act, 1894, s. 21 (1). Municipal corporations owe their incorporation in general to their charter. District councils for rural districts are incorporated by the Local Government Act, 1894, s. 24 (7). See also section 21 of that Act.

Provisions
for con-
tracting.

All of these bodies consequently would, if no provision were made as to the mode of contracting, have to contract under seal in all cases which could not be brought within the exceptions to the above rule. The Light Railways Act does, however, sufficiently enable provision to be made in the order to avoid this difficulty by authorising the incorporation in the order of sections 96, 97, of the Companies Clauses Consolidation Act, 1845 (*post*, Appendix), or (if that is preferred) the insertion of other similar provisions for the purpose (see sections 11, 12 of the Light Railways Act, *post*, p. 68), and doubtless advantage will be

taken of this power to remove what might otherwise, in Chap. 2. some cases, be a difficulty.

A council may also obtain, in the order, power to lease a light railway to an existing railway or other company, and such company may, in like manner, obtain power, if it has not the power already, to take such a lease. See section 11 of the Light Railways Act, and Chapter VIII., *post*, pp. 56, 68. For these latter purposes a convenient course for obtaining the required powers will be for the council and the company to make a joint application for the order or orders required. The Light Railways Act, s. 2 (c), *post*, p. 60.

In cases also where power is sought to raise money and make advances to, or take shares in, a light railway company, the council must join with the company constructing, or proposing to work, the line, in making the application for the order. In some instances councils may desire to lease a light railway of which they are the owners upon the terms that they should have, after a certain interval, a right, on certain conditions, to assume possession of the railway, or, if they have taken shares or advanced money, to have an option, exerciseable at some future date, or dates, of purchasing the railway on certain terms; and if so there is no legal objection to the insertion in the order of provisions to carry out any of such desired objects. Section 11 (c) (g) (l) (m), *post*, pp. 68, 69. In settling orders containing provisions of this nature, the clauses of private Acts containing such provisions which have been authorised by Parliament will be found of use, and the cases of *The London Street Tramways Company* [1894], A. C. 489, and *The Edinburgh Street Tramways Company* [1894], A. C. 456, should also be considered. If a power of acquiring the railway at some future date is desired, it should be inserted in the original order, since section 24 (c) of the Light Railways Act expressly provides that such a power is not to be inserted by way of amendment afterwards without the consent of the owners of the railway.

Chap. 2. It will be apparent from the above observations and from a study of the Act that there may be great variety in the terms and conditions of the various orders, and that much is left to the discretion of the Light Railway Commissioners (subject to the approval of the Board of Trade, as appears by sections 9 and 10 of the Act), and doubtless in dealing with applications by public bodies such as councils the Commissioners will only permit of the insertion in orders of such powers, terms, or conditions as seem to be advisable in the interest of the general public or of the locality, or, at all events, not unreasonable.

Scheme of Act. The scheme of the Act would appear to be to permit the councils, subject to certain restrictions, to ask for orders in cases where a railway would be beneficial, in such form as they, from their local knowledge and in their representative capacity, think most suitable, and to enable the Commissioners, after considering all objections put before them, to frame the order in such shape as may appear to them most suitable, having regard to all circumstances, including the desires of the locality thus expressed by the councils, the legally constituted representatives of the locality.

Opposing applications. A council may, under the Act, where they think fit, oppose, instead of supporting, an application for an order, either with the object of securing its rejection, or with that of obtaining some modification of the terms in which it is proposed to be drawn. Sections 7 (1) (2), 8, 9. It is also clear that they are entitled to be consulted before application is made by other parties for an order authorising a railway within their area (section 7, *post*, p. 64), and that it would afford ground for objection to such an order that they had not been allowed fair opportunity for considering a proposed scheme.

A council may, it would seem, join with or support an existing railway company, which is prepared to construct or work the railway, in applying for an advance from the Treasury under section 5 of the Act (*post*, p. 62) where the circumstances are such as to fall within that section.

It is at least doubtful whether the Treasury can under the Act make advances, either by way of loan under section 4, or as free grants or loans on special terms under section 5, directly to councils. Chap. 2.

An advance by the Treasury under section 4 is to be made only when the council have also agreed to make an advance to the "light railway company," and it is not to exceed in amount such advance by the council. See section 4 of the Light Railways Act, *post*, p. 61. The advance so made is also to rank *pari passu* with the loan by the council (see *ibid.*), from which it would seem as though the Act contemplated in such cases that two distinct bodies should be interested, a light railway company and a council, and that the context is such as to prevent the expression "light railway company" from there including a council. The general definition of the meaning of the expression "light railway company," given in section 28 of the Act, is wide enough to include a council, but it is to be applied only where the context does not otherwise require. Advances
by Treas-
ury to
councils.

The "special advances" authorised to be made by the Treasury under the later section (section 5), as free grants or loans on special terms, would seem also not to be intended to be advances to councils. If, however, an advance by way of loan on easy terms is made to a council, the order authorising the borrowing by the council must contain provisions for its repayment as required by section 16 (4), *post*, p. 73, and see also section 11, *post*, p. 69. It is also to be observed that the advance under section 5 is to enable the railway to be constructed, and that it is to be constructed by an existing railway company. Upon the whole, therefore, it would seem that the power of the councils in relation to loans, advances, or grants from the Treasury is limited to supporting or joining in applications by others entitled to ask for such assistance, and that existing railway companies alone probably will profit by the proposed "special advances" under section 5, whilst the advances Special
advances.

Chap. 2. under section 4 will be open to new trading companies or syndicates formed for constructing light railways, as well as to existing railway or construction companies, or to individuals. See further, Chapter VI., *post*, p. 39.

Expenses
of councils.

The expenses incurred by councils in promoting or opposing applications for orders authorising light railways and allowed by the Light Railway Commissioners may be paid by such councils. Section 16, *post*, p. 73. The power of thus paying extends to all expenses allowed by the Commissioners incurred, "with reference to any application for an order authorising a light railway under this Act"; so that the power to pay depends not upon the success of the council in its application or support of an application, or the success of its opposition, as the case may be; but upon whether the expenses are allowed by the Commissioners, as not unreasonably incurred with reference to an application for an order. The expression "with reference to" an

If applica-
tion aban-
doned.

application would permit the Commissioners to allow any expenses fairly incurred by a council in taking the necessary steps to apply for, or to join in applying for, an order under the Act, even though the application should happen to be withdrawn before being actually brought before the Commissioners, or, indeed, even, it would seem, though no application should in fact, in the particular case, be made. The expenses of preparing to make the application are incurred before the application, and at a time when no application exists, and if payment of them were made to depend upon whether there was, or was not, an application for an order authorising a light railway thereafter formally made, it would compel councils desiring to act uprightly, to persist in applications which ought not to be made. It is, therefore, thought that the preliminary expenses properly and reasonably incurred by councils in preparing, to apply for, or to join in applying for, or in opposing an application can in all cases be allowed by the Light Railway Commissioners to be paid by the council, and that in all proper cases the Commissioners will to a proper extent allow them.

Where the proposed railway is being made independently of the council it may be necessary for the council to take steps to see that a proper scale of maximum charges, or that some particular provision, is inserted in, or excluded from, the order, and for that purpose it may be needful to object to the scheme as proposed. Expenses thus incurred can, where the Commissioners see fit, be allowed by the Commissioners to be paid by the council.

Chap. 2.

Expenses
of oppos-
ing.

In some cases it may be possible for the particular council to employ their own officials thus to object, or to do the whole or part of the work they desire to have done "with reference to" an application. Where this is possible, probably the council will desire to have the work done, as far as practicable, by their own officials, and to vote them a payment to compensate them for the additional work imposed upon them, and a question will then arise as to how far it is legitimate for a council to make such a payment to its salaried officials, and as to whether it would be considered an expense properly incurred, when the allowance of expenses to be paid by the council had to be dealt with by the Light Railway Commissioners. Upon this, it is submitted that the Light Railway Commissioners will probably allow of reasonable payment to such officers where the work is beyond or outside the scope of their official employment, and not fairly within the limits of the service for which they receive the appointed salary, and if also, of course, the work is "with reference to an application" for an order as above explained. In support of this view, the judgment of Lord HALSBURY in the case of *Edwards v. Salmon*, 23 Q. B. D. 531; and that of Lord ESHER in that case, and in the earlier case of *Burgess v. Clark*, 14 Q. B. D. 735, 738, may be cited, as showing that even under a statute containing stringent provisions like those of the Public Health Act, 1875, there is no reason to consider it illegal or improper to vote to the salaried officials extra pay for work clearly extra.

Extra pay-
ment to
officials of
councils.

Chap. 2. The members of county or borough, or district councils, are not permitted by law to enter into contracts with the councils of which they are members as freely as they might do if they had not been such members. The restrictions imposed upon them are to be found in the statutes regulating those bodies respectively. The object of the restrictions would appear to be to prevent any possibility of abuse by the members of their position, to the public detriment and to their own private advantage ; and to secure this end statutory provisions of a stringent nature have been enacted, which sometimes may be thought to operate somewhat harshly, though possibly the general beneficial effect of them outweighs the occasional hardship. Thus, with regard to municipal corporations or councils of boroughs, such provisions are to be found in the Municipal Corporations Act, 1882. By that Act a person is disqualified for being elected and for being a councillor, if and while he "has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council" (Municipal Corporations Act, 1882, s. 12 (1) (c)) ; but not if he merely has a "share or interest in any lease, sale, or purchase of land, or any agreement for the same," or in a loan to the council, or in a newspaper in which the council advertises, or in a company. *Ibid.*, section 12 (2). A penalty of not exceeding fifty pounds is imposed upon a person who acts in a corporate office without being qualified, or when disqualified. *Ibid.*, section 41.

Members
of council
contract-
ing.

If muni-
cipal
councils.

If county
councils.

These provisions are applied, *mutatis mutandis*, to county councils and the members of such councils, by section 75 of the Local Government Act, 1888.

If district
councils.

The Local Government Act, 1894, contains provisions, which are very similar, applicable to councils of districts other than boroughs.

By section 46 (1) of that Act, a person is "disqualified for being elected or being a member or chairman of a council" of a district, other than a borough, if he—

(d) holds any paid office under the district council ; or Chap. 2.

(e) is concerned in any bargain or contract entered into with the council, or participates in the profit of any such bargain or contract, or of any work done under the authority of the council.

(2.) Provided that a person shall not be disqualified for being elected or being a member or chairman of any council or board by reason of being interested—

(a) in the sale or lease of any lands or in any loan of money to the council or Board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood ; or

(b) in any newspaper in which any advertisement relating to the affairs of the council or Board is inserted ; or

(c) in any contract with the council or board as a shareholder in any joint stock company ; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

A penalty of not exceeding 20*l.* is imposed upon a person who acts when disqualified, or votes when prohibited as above. (Local Government Act, 1894, s. 46 (8).)

The above restrictions and exceptions applicable to the respective councils, will apply to them and their members in regard to their action under the Light Railways Act, as it is not supposed that the Light Railway Commissioners will feel at liberty to attempt by their orders under the Act, to vary or limit the operation of these enactments,

May not
contract
for light
railways.

Chap. 2. and indeed it is, at the least, very doubtful if they have any power to dispense with or limit the operation of these Acts of Parliament.

Appeal by
council to
Board of
Trade.

It is further to be noted that by section 7 (5), *post* p. 65, a special power of appeal is given to councils where their application for a light railway is refused by the Commissioners. They have a right given them, which is not given to other applicants, to appeal from such refusal to the Board of Trade.

CHAPTER III.

THE RIGHTS OF LANDOWNERS.

Rights
under pre-
vious Acts.

A LANDOWNER has always had the right to lay down a rail or tramway upon his own land, and a limited owner, both under the Improvement of Land Act, 1864, s. 9 (*post*, Appendix), and the Settled Land Act, 1882, s. 25, is, amongst other improvements which he is authorised to make, authorised to construct permanent railways and tramways. The Railways Clauses Consolidation Act, 1845, which is incorporated in all special Acts authorising railways, and may be incorporated in an order authorising a light railway, confers upon landowners express rights of making junctions between branch lines and the lines of railway companies (section 76, *post*, Appendix), subject, of course, to certain restrictions and conditions. The powers of running locomotives with carriages and waggons from such branch lines on to the main lines may be regulated by the Board of Trade under the Railway Regulation Act, 1842, s. 12, a section which is also applicable to light railways.

Under
Light
Railways
Act.

None of these powers enabled a landowner to enter upon land of another person and construct a railway thereon. This limitation, which has in some instances seriously interfered with the development of estates, may be in effect removed by the provisions of the Light Rail-

ways Act. Under its provisions landowners may also be able to obtain assistance in the construction of railways by way of loans from the local authorities and from the Treasury. See Chapter VI., *post*, p. 39. Chap. 3.

An individual may under the Light Railways Act apply for an order authorising a light railway. Section 2, *post*, p. 60. A landowner, therefore, who is desirous of connecting one part of his estate with another part, or with a main railway, but who is prevented from doing so by reason of other land intervening or of having to cross highways, can apply to the commission for the necessary powers. Several landowners may likewise apply jointly for an order, or may, if it be thought advisable, be incorporated for the purposes of carrying out that order. Sections 2 and 11 (*e.*), *post*, pp. 60, 68. They may also apply jointly with a council, corporation, or company. If the landowners desire afterwards to obtain a loan from the local authority, it should be noted that the order should authorise the local authority to make the advance, otherwise they will be unable to do so, in which case the council must join in the application. Section 3, *post*, p. 60, and see "Powers of Councils," *ante*, p. 19. It should also be noted that an ordinary loan from the Treasury under section 4 can only be obtained where the council of the county district or borough have advanced or agreed to advance a sum to the light railway company, not less in amount than the sum sought from the Treasury. Applica-
tion for
order.

Besides applying for an order, landowners, whether limited or otherwise, have large powers of assisting other bodies in the construction of a light railway. Under the Lands Clauses Acts, limited owners could only sell land to promoters of companies for full value as settled by two surveyors pursuant to section 9 of the Lands Clauses Act, 1845, *post*. A sale by a tenant for life under the Settled Land Acts must also be at the market price. Under the Light Railways Act, s. 19, however, limited owners are empowered, when the railway will permanently benefit Assisting
by grants
of land.

Chap. 3. the rest of the estate, to either sell the land to the light railway company at a price less than the real value, or to give it for nothing. The sanction of the Board of Agriculture must, however, be obtained, and the Board must be satisfied that the benefit to the estate will be greater than the value of the land, if given, or of the difference between the price to be taken and its real value.

Waiving
compensa-
tion.

There does not appear to be any provision to enable a limited owner to waive a claim for compensation for injuriously affecting his land if no land is taken, although, perhaps, the wide meaning given in statutes to the word "land" might bring some cases, such as the interference with a right of way within the terms of section 19 of the Light Railways Act, *post*, p. 75.

Provi-
sional
agree-
ments.

Another apparent omission in the Act lies in the fact that there is no power contained in it to enable promoters of a railway company prior to application for an order to make provisional agreements with limited owners to give land, or to sell it at less than its full value. Such agreements, if entered into, would, therefore, neither bind the owners nor the company, although the order and the consent of the Board of Agriculture were subsequently obtained, unless the Commissioners or Board of Trade have power in the order to direct that such agreement shall be binding. There is no such power expressly given, and it is doubtful if the wide words of section 11 (*m*), enabling provisions to be inserted in the order of any matters "ancillary to the objects of the order, or expedient for carrying these objects into effect," will be construed as giving such a power. A similar question, but in another form, arises in the case of provisional agreements made by promoters with owners of the fee simple or with tenants for life under the Settled Land Acts. Such agreements might be valid in so far as the landowners had power to contract, but unincorporated promoters cannot bind the company afterwards to be incorporated (*Kelner v. Baxter*, L. R. 2 C. P. 174); and in the case of corporate bodies it

is probable in many instances that until an order is obtained **Chap. 3.**
 such agreements would be *ultra vires*. In the Railways
 Construction Facilities Act, 1864, special provision was
 made for this difficulty in sections 3 and 30, *post*, Appendix.
 See also Chapter I., p. 7, *ante*.

The Light Railways Act further enables landowners to Loans charged on land.
 assist in the construction of light railways by contributing
 money for the purpose of any works of a light railway,
 and charging the estate in the manner provided in the
 Improvement of Land Act, 1864, *post*, Appendix. The sanc-
 tion of the Board of Agriculture must be obtained, and
 that Board must be satisfied as to the permanent improve-
 ment to the remainder of the estate to the same extent
 and in the same manner as in the case of a free gift of
 land. Section 19 (2), *post*, p. 75.

It is not quite clear how far this section is intended to Subscribing for shares.
 amend or extend the Improvement of Land Act, 1864.
 Sections 78—89, *post*, Appendix, of that Act enable limited
 owners of land to subscribe for shares or stock in the
 capital, whether original or additional, of a company having
 power to construct a railway upon or near to their lands,
 and to charge the same upon the estate. Such owners can
 apparently, therefore, under that power subscribe for shares
 in a light railway company and charge the estate with it.
 The Board of Agriculture must sanction such charge, so
 probably section 19 of the Light Railways Act either
 extends the provisions of the Improvement of Land Act to
 include a free gift of money to a light railway, or the
 words “contributes any money” include in that section
 both a free gift and the taking of shares, and the sanction
 would, therefore, be given by the Board of Agriculture
 under the Light Railways Act in case of money contri-
 buted for shares. It is not quite clear, however, whether
 a tenant for life can devote capital money, which
 may be uninvested, to taking shares in the company or
 otherwise contributing to it. The Settled Land Act,
 1887, enables capital money to be paid in redeeming

Chap. 3. charges on land as money expended on an improvement under the Settled Land Act, 1882. It would appear, therefore, that if the Board of Agriculture sanction the charge on the estate of the money contributed for shares, that the payment off of such charge could be similarly sanctioned under the Settled Land Acts as a proper application for capital moneys.

Special
advance by
Treasury.

It may be noticed here that if a special advance is desired from the Treasury under section 5 of the Light Railways Act, one of the conditions of obtaining such special advance is that the Treasury must be satisfied that landowners, local authorities, and other persons locally interested have by free grant of land or otherwise, given all reasonable assistance and facilities in their power for the construction of the railway. Sub-section (1) (a), *post*, p. 62.

Selling
commons.

There is one restriction as to the granting or selling of land for a light railway. It is contained in section 21 and applies to commons. No common land can be acquired without the consent of the Board of Agriculture, which is only to be given when such acquisition appears to be necessary, and all proper steps must be taken to add other land to the common in lieu of that taken, and to secure convenient access from one part to the other when a common is divided. Special provisions are also contained in section 22 for the preservation of natural scenery and objects of historical interest, *post*, p. 77.

Notice if
land pro-
posed to
be taken.

Ample precautions are contained in the Act to prevent any unnecessary injury being done to land by the construction of a light railway. Before the application is made, all reasonable steps must have been taken to consult the owners whose land it is proposed to take and for giving public notice of the intended application. Section 7 (2), *post*, p. 64, and the rules, *post*, p. 85, contain specific provision for serving upon owners and occupiers notice as to the particular land proposed to be taken and asking for the objections of the owners. Plans of the railway and books of reference must also be deposited at some place where they

can be inspected. The Commissioners may hold a local inquiry, and, in any case, full opportunity must be given for the laying before them of objections to the application. The Commissioners are to consider all such objections, whether made formally or informally, and to make the necessary provisions. Section 7 (3). Landowners will, therefore, be enabled to appear and object to an application either in its entirety or for the purpose of having clauses inserted in the order for their protection, as, for example, to ensure the construction of accommodation works. The costs to which a limited owner may be put in protecting the estate, if not paid by the promoters, will, in general, be allowed out of the capital money. A tenant for life, for example, being a trustee for the remainderman, is entitled to be reimbursed. See Settled Land Act, 1882, s. 36, and *In re Ormrod's Settled Estate* (1892), 2 Ch. 318.

When the application goes before the Board of Trade, public notices of the fact are to be given and of the time for lodging objections. These objections are to be considered, and a public inquiry will, if necessary, be held. If the objection is upheld the order shall not be confirmed, or it may be modified to remove the objection. Sections 8 and 9, *post*, pp. 66, 67.

When the order is obtained, the procedure for taking land and for assessing compensation is provided by section 13. This is fully discussed in Chapter VII., *post*, p. 48.

The purchase money obtained for land acquired for the construction of a light railway and the compensation paid for injury must, in the case of limited owners, be applied for the benefit of the estate. As the Lands Clauses Acts will probably be incorporated in every order authorising a light railway, such money will be payable into the bank if it amount to or exceed 200*l.* Section 69 of the Lands Clauses Act, 1845, *post*. The order may, however, raise the limit to 500*l.* Light Railways Act, s. 14, *post*, p. 72. Sums above 20*l.* and under the prescribed limit may either be paid into the bank or to trustees. Lands Clauses Act,

Chap. 3.

Objections
to order.Before
Board of
Trade.Taking
land.Applica-
tion of
purchase
money.

Chap. 3. 1845, s. 71, *post*, Appendix. Sums not exceeding 20*l.* may be paid to the person entitled to receive the rents and profits. *Ibid.*, section 72, *post*, Appendix. Sums paid into the bank may be applied, with the consent of the court, either in the manner provided by the Lands Clauses Act, 1845, s. 69, or as capital money under the Settled Land Acts, 1882—1890. See Settled Land Act, 1882, s. 32. The costs of such application and of the proceedings before the court are payable by the promoters of the undertaking. Lands Clauses Act, 1845, s. 80, *post*, Appendix. If the money is paid to trustees it should be noted that the costs of re-investment will, apparently, not be payable by the promoters. Landowners interested might, therefore, be justified in opposing the variation of the Lands Clauses Act allowed by section 14 of the Light Railways Act in regard to the maximum amounts payable directly to trustees.

Making
sidings.

If the land has been sold under its value under section 19, it would appear that the money received cannot be further applied in assisting the construction of the light railway company, but if it is for the benefit of the estate, it might be devoted to constructing on the estate private sidings or branch lines to the main line of the light railway.

CHAPTER IV.

EXISTING RAILWAY COMPANIES, THEIR POWERS IN RELATION TO THE ACT.

May apply
for orders. AN existing railway company can, after a resolution authorising the application has been passed by its members as required by the rules made under the Light Railways Act (see *post*, p. 94), apply for an order authorising a light railway, or it can join with the council of a county, district, or borough, or with any other body or bodies, or with any individual in making the application. Section 2, *post*, p. 60.

Co-oper-
ating with
council.

In some cases it may be a convenient course for a council to apply jointly with an existing railway company

for an order permitting the council to contract with the railway company for the construction of the light railway by the latter, and for the leasing of it when made to the latter upon arranged terms for a fixed period, or in perpetuity, with a reservation of a right in the council to cancel the lease at certain periods, if they should desire to do so, and to assume the working of the light railway themselves. Chap. 4.

Orders of this and of a similar nature would appear to be clearly authorised by the Act (sections 2, 3, 11 (c), (d), (l), (m), and section 5 (1)), and, in a proper case, the necessary powers for thus contracting and for raising the necessary money will doubtless be granted by orders made under the Act to councils requiring such powers. Powers enabling council to co-operate with company.

A more difficult question seems, however, to arise with regard to the position of existing railway companies, and the extent to which, by orders under the Act, powers will be given to them which are necessary or convenient to enable them to co-operate, for the purposes of a light railway, with councils or other companies or individuals, but which, in the absence of a special Act or other statutory authorisation, they do not possess. It appears by section 11 (c), (d), *post*, p. 68, that the orders may give powers for constructing and working the railway, and for making agreements with railway companies for the purpose, and may also give to such railway companies any power required for carrying the orders into effect. And by section 11 (m) a general power is given of inserting in the orders anything which may be considered ancillary to the objects of the order or expedient for carrying those objects into effect. So that it would seem the general intention of the Act is, that any power needful to be given to an existing railway company for the purpose of carrying out the Act may be given by an order under the Act and the necessity avoided of a resort to the more expensive machinery of a special Act. Powers enabling company to co-operate with council.

It is, perhaps, unfortunate that no express words occur empowering the Commissioners to insert in their order Borrowing money.

Chap. 4. powers authorising existing railway companies to borrow money for the purpose of themselves constructing, or of lending to others who are constructing light railways, similar to the words used in regard to councils in section 11 (*g*), so that all question as to the intention of the statute on this head might have been set at rest.

Limitation on powers. An existing railway company is a body incorporated for special purposes and unable legally to act beyond those purposes without further statutory power being conferred upon it enabling it to enlarge its purposes or objects; consequently, it cannot, without special authority, take shares in or lend money to another company. See *Ashbury Carriage Company v. Riche*, L. R. 7 H. L. 653; *Great Eastern Railway Company v. Turner*, L. R. 8 Ch. App. 149; *Great Western Railway Company v. Metropolitan Railway Company*, 32 L. J. Ch. 382.

Taking shares in a light railway company. It may, however, in some cases be desirable that an existing railway company should take shares in a light railway company, and upon this head the same question arises as to the extent of the powers that will be given by orders. It is thought that where the shareholders of an existing railway agree, or substantially agree, as shown by a large majority of votes, that they desire powers such as the above to be granted to their company, such powers will, in proper cases, be granted and conferred by orders under this Act, and further, that powers so conferred will be held to be within the scope of the Light Railways Act should any question arise as to their legal validity. In some cases, where a majority of the shareholders are desirous of obtaining powers of the nature above discussed, there may be a large and substantial minority who object to being embarked in an undertaking or undertakings foreign to those to which they became parties on becoming shareholders, and where that is the case the Light Railway Commissioners possibly may, where they do not consider the opposition of such a minority frivolous, ill-founded or dishonest, or the Board of Trade may, when

the matter is before them, under section 9, *post*, p. 67, Chap. 4.
 decline to deal with it by order under the Light Railways
 Act, and leave the matter to be dealt with by Parliament
 in a special Act, if Parliament should so think fit.

Until a practice has arisen, it cannot be ascertained how far or subject to what conditions, the Light Railway Commissioners or the Board of Trade will grant to existing railway companies powers of raising money either by issue of new stock or by debentures, or by charges on the new undertaking, or of taking shares in light railway companies, or of otherwise assisting light railways, but it is clear that none of these powers will be granted without the shareholders being fully consulted, since the rules made under the Act provide as a condition in cases of applications to the Commissioners by existing companies that a certificate must be produced that the members of the company have assented to the application by such a resolution as is required by the Standing Orders of Parliament in the case of an application to Parliament by such company. Until the shareholders have passed such a resolution it would seem therefore that no formal application of an existing railway company for such powers will be considered by the Commissioners. The Standing Order (62) applicable to existing railway companies will be found in Appendix, *post*.

The resolution must be passed by the votes of proprietors holding at least three-fourths of the paid up capital of the company represented by the votes at a meeting convened for the purpose as required by the above Standing Order.

When an existing railway company is applying for an order authorising the raising of additional capital it may be found convenient to incorporate, with any necessary modifications, the provisions of the Companies Clauses Act, 1863 (*post*, p. 232), in regard thereto. Those provisions will not apply to light railways under the Light Railways Act unless so incorporated. They have been applied by sections 3 and 20 of the Railway Companies Powers Act,

Chap. 4. 1864 (*post*, p. 267), to ordinary railways incorporated under a special Act, or by a certificate under "The Railways Construction Facilities Act, 1864" (*post*, Appendix).

Junctions. That it is intended by orders under the Light Railways Act to authorise existing railway companies to undertake in proper cases the working of light railways is clear (section 18, *post*, p. 75, section 5 (1), *post*, p. 62), and undoubtedly in many cases it will be the most convenient arrangement. In other cases, where the light railway is worked by a separate company, or by a council, questions will arise as to the powers and mode of making junctions with the lines of existing companies. Those constructing the light railway may be authorised to make the requisite junctions, subject to the provision in section 23 (*post*, p. 77), that they shall, as far as in the opinion of the Board of Trade is practicable, avoid interference with the lines of rails of the existing railway company for passenger traffic. In providing for junctions the orders will doubtless apply, with such modifications as may be necessary, the provisions of the Railways Clauses Act, 1863 (*post*, Appendix). It may in some cases happen that a proposed light railway may be such as would interfere with, and divert traffic from, an existing railway company's system, and where this is so the existing company will undoubtedly be entitled to object, and to have their objection fully considered. See *ante*, p. 7; and sections 7, 8, 9 (3), *post*, p. 64 *et seq.*

Opposing
light
railway.

It may also sometimes be found expedient for an existing railway company to object to a proposed order authorising a light railway to be constructed and worked by a light railway company, or other body, or persons, in order to obtain running powers over the light railway, or for other analogous reasons, and in such case also they will be entitled to make their objection and have it considered. As to working agreements and leasing of light railways, see further, *post*, p. 56.

CHAPTER V.

Chap. 5.

NEW COMPANIES.

It is contemplated by the Light Railways Act that, in some cases, light railways will be constructed or worked, or both constructed and worked by companies, either formed for the purposes of a particular railway, or formed for the purposes of light railway enterprise in general, that is for the purpose of operating wherever a sufficiently favourable opportunity may be found. Companies of these two kinds are conveniently termed "light railway companies," though it must not be forgotten that in the Light Railways Act itself the description "light railway company" is not confined to these two kinds of companies. See section 28, *post*, p. 81. By section 11 (*e*), in an order under the Light Railways Act, a provision may be inserted incorporating a company "for the purpose of carrying out the objects of the order" (*post*, p. 69). The effect of the insertion of such a provision is that a body corporate is thereby created, the powers of which are absolutely limited to carrying out the purposes or objects of the order; though when fresh powers are required by it for the purpose of carrying out further undertakings, for which it is obtaining further authority under the Act, those fresh powers can be conferred upon it by the order authorising the further undertakings. See section 2, *post*, p. 60.

Two
classes of
companies.

Incorporation
under
Light
Railways
Act.

Where it is desired to form a light railway company for a specified railway or railways, the best course would appear to be to make use of the above power of obtaining incorporation under the Light Railways Act; but where it is desired to form a company to take up and promote light railway undertakings in general, it would probably be found better to incorporate the company as an ordinary limited company, and to apply from time to time as such limited company for orders, under the Act, authorising

Course
to be
adopted.

Chap. 5. each particular enterprise as it may be determined upon. The Light Railways Act does not, it will be observed, give power to incorporate a company for the purpose of railway enterprise in general, but merely for the purposes of the particular scheme or schemes then proposed, whilst the Companies Acts, 1862 to 1890, admit of the incorporation of a company under them for the purpose of such enterprise in general.

Under
Companies
Acts.

The constitution of a company incorporated under the Companies Acts is defined and limited by the memorandum of association, and it cannot enter into contracts or undertakings outside the scope of its original memorandum (*Ashbury Carriage Company v. Riche*, L. R. 7 H. L. 653; *Attorney-General v. Great Eastern Railway Company*, 5 App. Cas. 473), until it has obtained power by a special Act, or in some similar way to enlarge the memorandum, and has so enlarged it as to bring those contracts or undertakings within it.

It is supposed that the Light Railway Commissioners, in dealing with companies thus incorporated under "the Companies Acts, 1862 to 1890," will, in general, grant to them orders such as their memoranda of association authorise them to apply for only, and confer upon them the powers only, which seem to be required to carry out these orders, and which are within the scope of their memoranda of association, though it is not thought that the jurisdiction of the Light Railway Commissioners is as matter of law absolutely confined within these limits. See "Existing Railway Companies, &c.," *ante*, p. 34.

Under
Light
Railways
Act.

Where an order under the Light Railways Act incorporates the company, its constitution will be defined and limited by, and its powers will depend upon the order, or, perhaps, it might be more accurate to say upon the order and the Light Railways Act. It follows from this, that all the required powers, whether of raising capital, of borrowing, of constructing, or of working the proposed light railway, or, indeed, in general, of anything else,

should be provided for in the order, except in so far as the Chap. 5. general Acts are applicable.

The Treasury is empowered by the Light Railways Act Advances. to make advances for the purposes of light railways to these companies, and the councils may by an order under the Act obtain power to make similar advances to or to take shares in them, or they may obtain power to engage them to construct or to engage them to work a light railway. See "The Capital, &c.," *post*, p. 44 ; "Councils, &c.," *ante*, p. 17.

An existing company must, on making an application to Resolution. the Light Railway Commissioners, produce to them a certificate that the members of the company have by resolution, passed as required by the Standing Orders of Parliament in the case of an application to Parliament by such company, assented to the application. See Rule 27 (*l*), *post*, p. 94, and Standing Orders, Appendix, *post*.

CHAPTER VI.

THE CAPITAL AND ITS PROVISION.

It is of importance that the applicants for an order Estimate authorising a light railway should place their financial of cost proposals before the Commissioners in as complete a form to be pre- as practicable, in order that the Commissioners, before making the order, may see reasonable probability of the applicants being able to construct and work the railway. An estimate of the probable cost of construction must also be submitted. A form of such an estimate will be found in Rule 26 of the Rules under the Light Railways Act, *post*, p. 92.

In discussing this matter we may divide the applicants for orders to construct railways into the following classes :—

- I. An individual.
- II. A council.

Chap. 6. III. Persons desirous of being formed into a new company.

IV. An existing railway company.

Land-
owner
applying.

Charging
settled
land.

Under
Improve-
ment Act,
1864.

I. *Individual Applicant*.—Under this heading it will only be necessary to discuss the case of a limited owner, such as a tenant for life, who being in possession of a considerable estate may desire himself to construct a railway for its development. If such an owner requires to interfere with land other than his own, he must obtain an order from the commission. Such an owner will probably desire to construct the railway out of capital money, or to charge the cost upon the estate. As regards paying it out of capital money, sections 21 and 25 of the Settled Land Act, 1882, enable tenants for life to invest capital money in certain authorised improvements. Among these are “the making or execution on, or in connection with, and for the benefit of, settled land,” of tramways, and railways. The words “in connection with” do not appear to have been judicially construed, but it is presumed that they might be held to extend to the construction of a light railway on land outside the settled land, but for the purpose of connecting that land with another railway or with a centre of industry.

As regards charging the estate with the outlay upon the construction of the railway, the Improvement of Land Act, 1864, will apparently be applicable. That Act, which applies to owners in receipt of the rents and profits, except certain tenants for life under leases, enables the Board of Agriculture to sanction improvements on estates, among which improvements are included the making of permanent tramways and railways for all purposes connected with the improvement of the estate. Section 9. The Board of Agriculture, after certain enquiries and being satisfied that the expenditure will benefit the estate to the extent of the expenditure, may make an order charging the estate with the amount. Sections 11—51, *post*, p. 254.

The above provisions would be similarly applicable where

two or more owners without being incorporated propose Chap. 6.
to carry out the construction of the railway.

Landowners who have not capital money to lay out, and who desire to make a light railway, may, if the council of the district is willing to assist, be able to borrow part of the funds from the council of the district, provided it can be shown that the railway will benefit the area of that authority. In such case the council must be a party to the application. Light Railways Act, s. 3, *post*, p. 60; and see Chapter II. "The Powers of Councils," *ante*, p. 13.

As to loans from the Treasury, see *post*, p. 45.

II. *Council as Applicant.*—Where a council is an applicant for an order to authorise the council itself to construct a railway, the capital expenditure will, for the most part, be provided by borrowing, unless the council holds other funds which may be devoted to the purpose, or the landowners and other persons interested contribute towards the undertaking.

Section 16 (2), *post*, p. 73, of the Light Railways Act provides that where a council, whether of a county borough or district, are authorised to expend any money by an order authorising a light railway, they may raise the money if for capital expenditure in the manner authorised by the order. Section 11 (*g*) gives the Commissioners and Board of Trade power in the order to authorise a council to borrow money, and to regulate the terms on which any money is to be borrowed, and to limit the amount. The Board of Trade may, from time to time, on the application of any council, extend that limit. Section 16, sub-section (3). The money must be replaced by a sinking fund or otherwise within a fixed period not exceeding sixty years, and provision for this must be made in the order. Sub-section (4).

This money will presumably be borrowed on the security of the revenues of the council, whether arising from the rates or otherwise, or of the property of the council, including the railway itself. The provisions in the order will probably follow the analogous provisions in the various statutes which regulate the borrowing of money by councils for the

Chap. 6. various purposes of local government. These provisions will be found, as regards county councils, in sections 69 and 70 of the Local Government Act, 1888; as regards district councils (urban and rural), in sections 233—244 of the Public Health Act, 1875; and as regards municipal corporations, in sections 106, 112, 113, 118, and 120 of the Municipal Corporations Act, 1882.

Where a loan is proposed to be raised by debentures, debenture stock, or annuity certificates, the Local Loans Act, 1875, will, no doubt, also be made applicable.

By dis-
trict and
municipal
councils.

As regards borrowing by district and municipal councils, it will not be sufficient that the order for a light railway should merely authorise the borrowing, because the above-mentioned provisions would not, in such a case, be applicable, inasmuch as they do not extend to all the purposes for which such councils may borrow, but relate solely to borrowing for certain specific purposes, among which the making of railways is not included. The order will probably, therefore, make these provisions expressly applicable to borrowing for the purposes authorised by it, subject to the necessary alterations and modifications.

As to the borrowing powers of district councils generally, see "Lumley's Public Health Acts," 5th edit., pp. 314—325; and of municipal corporations, see "Archbold's Municipal Corporations," 4th edit., pp. 117—139. The loans, it may be noted, under these Acts and under the Local Government Act, 1888, are subject to the sanction of the Local Government Board, and it would appear that the scheme of the Light Railways Act is to place the borrowing powers, for purposes of light railways, under the control of the Board of Trade.

By county
councils.

The provisions regulating the borrowing powers of county councils are somewhat wider than in the case of other councils. If the order authorising the light railway also authorise a county council to borrow, then the regulations as to borrowing in sections 69 and 70 of the Local Government Act, 1888, would apparently apply without being incorporated, as section 69 provides that a county

council may from time to time borrow, with the consent of the Local Government Board, for any purpose for which they are authorised by any Act to borrow, and for any permanent work which the county council are authorised to execute or do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years. Under a light railway order the consent of the Board of Trade will probably be deemed or made sufficient. Chap. 6.

Section 70 of the Local Government Act, 1888, deals with the issue of county stock.

The Light Railways Act does not expressly authorise a loan by the Treasury to county councils under section 4, and there would appear to be some doubt whether such loans are contemplated. See Chapter II. on "Councils," *ante*, p. 21. Loans by Treasury.

The Public Works Loan Commissioners are authorised to lend money to councils for light railways under the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1896 (59 & 60 Vict. c. 42). By Public Works Loan Commissioners.

The works expressly mentioned in the Public Works Loans Act, 1875, Schedule I., for which money may be lent, do not include light railways, and it might have been consequently doubted whether the Light Railway Commissioners had power in the order to provide that the Public Works Loan Commissioners might lend to local authorities for such works, and upon this point a serious difficulty might have arisen, but for the passing by the Legislature of the Public Works Loans Act, 1896, which in effect adds those light railways for which a council has obtained an order giving borrowing powers to the list of works expressly mentioned in the Public Works Loans Act, 1875, Sched. I.

It is, by section 2 of the Public Works Loans Act, 1896, provided that "there shall be added to the works for the purpose of which the Public Works Loan Commissioners may lend in Great Britain under the Public Works Loans Act, 1875, the following works, namely:—

"Any work for which the council of a county, borough, district, or parish are authorised to borrow."

Chap. 6. As to the expenses incurred by councils in connection with orders, see Chapter II. on "Councils," *supra*, p. 22, and the notes to section 16 of Light Railways Act, *post*, p. 73.

Expense of carrying on railway. Money for the carrying on of the railway by a council, and not treated as expenditure, is to be treated as a general expense, payable as such in the case of a county council and of a district council other than a borough council. In the case of a borough council it is payable out of the borough fund or rate. Section 16, sub-section 2 (*b*), *post*, p. 73. Profits are to be applied in aid of the rate out of which these expenses are payable. Section 16, sub-section 5, *post*, p. 74.

III. Persons desirous of forming a new company.

Capital of new company. When persons are desirous of being incorporated as a new company to construct and work a light railway, they can be so incorporated in the order authorising the railway. Section 11 (*e*). The order may provide that such a company shall make a deposit and provide for the application of the deposit. The Standing Orders in Parliament require a deposit of 5*l.* per cent. of the estimate.

Deposit. The deposit is intended as a security for the payment of compensation to landowners in case of abandonment of the undertaking, and the provisions as to the application will probably follow the Parliamentary Deposits and Bonds Act, 1892, *post*, Appendix ; and see Standing Orders, Appendix.

Provisions as to shares. The capital of such new company will, for the most part, be raised by shares. The order may incorporate the Companies Clauses Acts, 1845-89 (see sections 11 (*a*), 12, *post*, pp. 68, 70), and in the case of a new company the provisions of these Acts, with the necessary alterations and exceptions will, no doubt, be incorporated, for the purpose of regulating the creation and transfer of stock and shares, and for the general management of the company. The order may also provide for the proper audit of the accounts. Light Railways Act, s. 11 (*j*), *post*, p. 69.

Limited owners of land may take shares in such a

Chap. 6. exceed one quarter of the total amount required for the purpose of the railway, and is not to exceed the amount advanced by the council. *Ibid.* It is not to be advanced unless at least one-half of the total amount required for the railway is provided by share capital, and at least one-half of that share capital has been subscribed and paid up by persons other than local authorities. *Ibid.* So that, for example, if the council or councils are willing to provide one quarter of what is required, the Treasury may provide another quarter, and the public and existing railway companies the remaining half.

Limit of
Treasury
advance.

A loan, under section 4, from the Treasury will bear interest at a rate not less than $3\frac{1}{2}$ per cent. per annum, and will rank *pari passu* with the loan from the council. Section 4 (3), *post*, p. 62.

IV. An existing railway company.

Power
to raise
capital.

Where an existing railway company applies for an order to construct a light railway, the capital will no doubt be provided mainly, by the issue of new shares, or by the application of capital in their hands, or by capital which they have power to raise by shares and mortgage and which may not be required for the purposes for which the same was authorised to be raised. The order authorising the company to construct the railway may give the necessary powers for carrying the order into effect (Light Railways Act, s. 11 (*d*)), and this would appear to include the raising of additional capital. See *ante*, pp. 33—35. Share capital will doubtless be raised subject to the provisions in the Companies Clauses Consolidation Acts and Part II. of the Companies Clauses Act, 1863 (*post*, Appendix), which relates to additional capital, and which may be incorporated in the order. Power to create debenture stock may, it is supposed, similarly be granted; the creation and issue of debenture stock being made subject to Part III. of the Companies Clauses Act, 1863 (*post*, Appendix). As

to the powers of limited landowners to take shares in such company, see *ante*, Chapter III., p. 29. Chap. 8.

The powers of borrowing from the Treasury and from local authorities, given by section 4 of the Light Railways Act, will probably not be required in the case of large railway companies; but the special advances to be made by the Treasury under section 5 are only to be given when the Treasury are satisfied that an existing railway company will construct and work the railway. These special advances are intended to be made in cases where it is considered that without such assistance a railway company would not consider it a profitable speculation to construct the particular railway, but where such a railway would benefit agriculture in the district, would establish communication between a fishing harbour or fishing village and a market, or is necessary for the development of some definite industry. The amount which may be expended in special advances must not exceed 250,000*l.* Section 6, *post*, p. 63. A special advance may consist of a free grant, or a loan, or partly a free grant and partly a loan, and the loan may be made on such conditions and at such rate of interest as the Treasury direct. Section 5, sub-sections (2), (3).

There are two further conditions attached to the making of a special advance. The first condition is, that landowners, local authorities, and other persons locally interested must by free grant of land or otherwise give all reasonable assistance and facilities for the construction of the railway. As to the powers of limited owners to make free grants, see section 19, *post*, p. 75, and Chapter III., *ante*, p. 27. Conditions
of special
advance.

The second condition is, that the amount must not exceed such portion of the total amount required for the construction of the railway as may be prescribed by the rules to be made by the Treasury. Section 5, sub-section (1) (*a*) and (*b*). The Treasury may also require that the railway shall not be assessed to any local rate for a period not exceeding five years at a higher value than

Chap. 6. that at which the land was assessed before it was acquired for the purpose of the railway.

As to the further powers of an existing railway company to work a light railway, see Chapter IV., *ante* p. 32, and Chapter VIII., *post*, p. 56.

CHAPTER VII.

TAKING OF LAND AND COMPENSATION.

Procedure
to take
land.

THE procedure to take land for the purposes of a light railway, when the matter has not been arranged by agreement, is intended to be that provided by the Lands Clauses Acts (*post*, p. 156). Section 11 (*a*) *post*, p. 68, provides that where variations of these Acts are required, the Board of Trade shall make a special report to Parliament, but no variation whatever shall be allowed of the provisions with respect to the purchase and taking of land otherwise than by agreement. The procedure to determine the price to be paid for land thus taken, and the compensation to be given for injuriously affecting land is to be that of the Arbitration Act, 1889 (*post*, Appendix), with certain alterations, and not that provided by the Lands Clauses Acts. There is to be one tribunal for assessing all compensation, namely, an arbitrator appointed by the parties, or if they do not concur in the appointment, by the Board of Trade. He is to regulate his enquiries according to the provisions of the Arbitration Act, 1889, as altered by the Light

Powers of
arbitrator.

Railways Act. Section 13, *post*, p. 71. This arbitrator will also have power to settle disputes as to the apportionment of rentcharges, of copyhold rents, and of rents due under leases, and also to settle disputes as to the compensation to be made for the temporary occupation of land during the construction of the railway as provided in sections 30—44 of the Railways Clauses Consolidation

Act, 1845, *post*, Appendix. In the absence of any provision Chap. 7.
in the order the arbitrator would not apparently have any power as to ordering accommodation works, or determining as to their sufficiency (see sections 68—75 of the Railways Clauses Consolidation Act, 1845), but probably it will be found advisable to confer such power upon him in the order.

When a light railway company desires to take land, the method of proceeding will, except so far as it may be altered by the order authorising the particular railway, be as follows: A notice to treat will be served by the company upon all the parties interested in such land pursuant to section 18 of the Lands Clauses Act, 1845, containing the particulars therein mentioned and demanding from the parties the particulars of their estate and interest in such land, and of their claims in respect thereof. If the parties do not come to terms, this notice to treat and the landowner's particulars of claim will be put before the arbitrator as the subject of the reference.

It would appear from section 13, *post*, p. 71, of the Light Railways Act that, in the event of dispute and the parties not concurring in appointing an arbitrator, either party may apply to the Board of Trade to appoint an arbitrator for the purpose of determining the matter; but probably it will be found convenient for the Board of Trade to appoint one arbitrator to determine all the cases of disputed compensation arising during the construction of each particular railway. In that event either party will be at liberty to refer the question in dispute to the arbitrator so appointed. This reference will probably be made by sending the notice to treat and the claim to the arbitrator, and requesting him, in writing, to determine the matter. Notice of such reference should also be given to the other side. The procedure at the arbitration will be mainly in the discretion of the arbitrator.

After the arbitrator has settled the price, the conveyance can be completed and possession given in the usual way;

Chap. 7. but if the landowner refuse or neglect to convey, or is unable to make a good title, the company can vest his interest in themselves by paying the ascertained price into the bank and executing a deed poll. Section 75 of the Lands Clauses Act, 1845. If the landowner is a person under disability—such as a tenant for life—the money, unless under 20*l.*, will also be payable into the bank (*ibid.*, sections 69—73), unless a special provision is made pursuant to section 14 of the Light Railways Act, *post*, p. 72.

Taking
possession
before
price
fixed.

If the light railway company desires to take possession of the land before the price has been determined it must adopt another procedure, if the owner objects to such entry. This will be found in sections 84—91 of the Lands Clauses Act, 1845 (*post*, p. 174). They must first deposit in the bank the amount claimed by the landowner, or such a sum as shall be determined by a surveyor appointed by the Board of Trade to be the value of the owner's interest in such lands. They must further give to such owner a bond with two sufficient sureties, to be approved by the Board of Trade in case the parties differ, in a penal sum equal to the amount deposited, conditioned for payment to such party of the purchase money and compensation which may afterwards be found together with interest thereon at the rate of 5 per cent. per annum from the date of entry. Section 85. After giving or tendering such bond the company may enter peaceably, if they can, or call upon the sheriff to put them into possession.

Destroying
easements.

If the company desires to destroy an easement, or injures, or desires to injure land by any authorised act, which does not involve an entry upon such land, it is not necessary for the company to deliver a notice to treat or to deposit security. The company may thus, without any previous notice, injuriously affect, as it is termed, the land by destroying the easement or injuring the land, and the landowner's remedy lies in claiming compensation. *Duke*

of *Bedford v. Dawson*, L. R. 20 Eq. 353 ; *Reg. v. Poulter*, Chap. 7. 20 Q. B. D. 132.

It has also been said that it is unnecessary to deliver a Yearly notice to treat to persons having no greater interest in land than as a yearly tenant or as a tenant from year to year. See *Syers v. Metropolitan Board of Works*, 36 L. T. (N.S.) 277. Such tenants would receive notice to give up possession under section 121, but it is usual for promoters either to give a notice to treat, or to purchase the reversion and terminate the tenancy by notice as in the ordinary case of landlord and tenant.

When land has been taken by the company before the compensation has been ascertained, or where the land has been injuriously affected, the landowner must take the initiative to have the price fixed and the compensation determined. *Doe d. Armistead v. North Staffordshire Railway Company*, 20 L. J. Q. B. 249. The procedure in such case will be regulated by section 68 of the Lands Clauses Act, 1845, except in so far as it is modified by section 13 of the Light Railways Act and the order thereunder. The general result appears to be that the landowner must make his claim by notice in writing to the company, stating his interest in the lands and the amount of his claim, and expressing his desire to have the matter settled by arbitration. The company, if they dispute the claim, must then refer the matter to arbitration within twenty-one days, otherwise the landowner will be entitled to the full amount claimed, and may recover the same with costs by action in any of the superior courts.

When any matter is referred to an arbitrator appointed pursuant to section 13 of the Light Railways Act, the conduct of the inquiry will be in his discretion, subject, of course, to the general rules governing arbitrations and to the provisions of the Arbitration Act, 1889, in so far as they are applicable to such inquiries. As a question may arise as to how the costs of arbitration are to be borne, it would seem that in England the provisions of section 34

Chap. 7. of the Lands Clauses Act, 1845, will, in effect, govern. See note to section 34 of the Lands Clauses Act, 1845, *post*, p. 164, and to Schedule I. (i) of the Arbitration Act, 1889, *post*, p. 287.

Principles
of com-
pensation.

In determining the price to be paid for land and the compensation for injurious affection, the arbitrator will be bound by the principles which have been laid down in the numerous cases under special Acts which have incorporated the Lands Clauses Acts. These principles differ somewhat considerably when land is taken and when it is merely injuriously affected. It is proposed, therefore, to discuss these cases separately.

When land is taken, sections 49 and 63 of the Lands Clauses Act, 1845, alike provide that the assessing tribunal shall have regard to three grounds for compensation—(1) the value of the land to be purchased or taken; (2) the damage (if any) to be sustained by the owner by reason of the severing of the lands taken from other lands of such owner; (3) the damage to be sustained by otherwise injuriously affecting such other lands by the exercise of the powers of the special Act.

Value of
land taken.

In ascertaining the value of the land to be purchased the principle to be followed is to determine the value of that land to the owner. It is not the value to the company that is to regulate the price, but the value to the person who holds it, with all its potentialities and advantages to him. *Stebbing v. Metropolitan Board of Works*, L. R. 6 Q. B. 37; *Bourne v. Mayor of Liverpool*, 33 L. J. Q. B. 15. The fact that the land may be developed and become more valuable if put to another use is also to be considered, as in the case where agricultural land is near a town and may become valuable for building purposes. *Reg. v. Brown*, L. R. 2 Q. B. 630; *Ripley v. Great Northern Railway Company*, 10 Ch. App. 435. Damages likely to be suffered by reason of the owner being expelled from the premises are also to be regarded. These will include injury to trade and costs of removal (*Jubb v. Hull Dock*

Company, 9 Q. B. 443; *Reg. v. Commissioners of Rochdale*, 2 Jur. (N.S.) 861), and loss of fixtures (*Gibson v. Hammersmith Railway Company*, 32 L. J. Ch. 337). Chap. 7.

The compensation will be payable for damage by reason of severance if the lands severed be held by the same owner, although for different estates, and if the unity of ownership conduces to the advantage or protection of the property as one holding. *Holt v. Gas Light and Coke Company*, L. R. 7 Q. B. 728; and see *Cowper Essex v. Local Board for Acton*, 14 App. Cas. 153.

When lands are severed and it is shown that the remaining land is likely to be injured by reason of the execution and carrying on of the authorised works on the land taken, the arbitrator must consider the nature of the works and the injury likely to be caused thereby, and it appears that compensation should be awarded for such injury although it may be caused by acts which would not in themselves have given rise to a cause of action, as, for example, the depreciation caused to property by the erection and carrying on of sewage works (*Cowper Essex v. Local Board of Acton*, 14 App. Cas. 153), or by the dust and noise of traffic (*Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418), or the risk of fire from the sparks of an engine (*In re Stockport, Timperley and Altrincham Railway Company*, 33 L. J. Q. B. 251). In arbitrations under the Light Railways Act, in estimating the damage by reason of severance, the arbitrator is, however, to have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway. See section 13, *post*, p. 71.

When no land is taken, the grounds upon which compensation can be recovered for injurious affection are much more restricted than when land held therewith is taken. It is, of course, a fundamental rule that compensation can only be recovered for injuries done under the powers conferred by the Act authorising the works. The

Injury by
severance.

Special
provision.

Compensation
when no
land taken.

Chap. 7. remedy for damage caused by acts *ultra vires* is by action for damages and an injunction. Besides that rule the claimant for compensation for injurious affection must also show that the injury has been occasioned by :—

Grounds
for claim.

- (1.) some act which, if unauthorised, would have given rise to a cause of action ;
- (2.) by a physical interference with some right, public or private, which the owners or occupiers are by law entitled to make use of, in connection with such property, and which gives an additional value to such property apart from the uses to which any particular owner or occupier might put it ;
- (3.) by the execution of the works and not by their subsequent use.

As an example of the first, it may be noted that compensation will not be awarded for obstructing a view or for raising an embankment which will overlook the premises and destroy the privacy. *Butt v. Imperial Gas Company*, L. R. 2 Ch. 158 ; *R. v. Penny and South Eastern Railway Company*, 26 L. J. Q. B. 225.

Access to
premises.

On the second ground, compensation will not be recoverable for loss of profits occasioned by obstructing streets and making the access thereto temporarily inconvenient (*Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175), but if a public access to premises is completely destroyed, or rendered more difficult so that the premises are injured, compensation is recoverable. *Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243 ; *Caledonian Railway Company v. Walker's Trustees*, 7 App. Cas. 259. Compensation has been held to be recoverable where a railway embankment has made a road much narrower (*Beckett v. Midland Railway Company*, L. R. 3 C. P. 82), and where a railway company lowered the level of a highway so that a cottage was left on the edge of a precipice 7 feet high. *Moore v. Great Southern and*

Western Railway Company, 10 Ir. C. L. 46. A level crossing over a public road affords no ground of compensation to owners of adjoining property (*Caledonian Railway Company v. Ogilvy*, 2 Macq. 229), but it is otherwise if made over a private right of way between farm lands. *Glover v. North Staffordshire Railway Company*, 16 Q. B. 912. Chap. 7.

On the ground that the injury must be caused by the construction of the works and not the use, no compensation is payable for damage caused by the vibration, noise and smoke caused by passing trains. *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171; *Attorney-General v. Metropolitan Railway Company* (1894), 1 Q. B. 384. Vibration and noise.

It should be noticed that the power of the arbitrator in all these cases is merely to determine the amount of the compensation. It is wholly outside his jurisdiction to ascertain or enquire into the claimant's title to the land or his right to recover compensation. This has been decided as regards all the different assessing tribunals and under different public and private acts by a long series of cases, among which may be cited *Reg. v. London and North Western Railway Company*, 3 E. & B. 443; *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; *Brierley Hill Local Board v. Pearsall*, 9 App. Cas. 595; *In re East London Railway Company (Oliver's Claim)*, 24 Q. B. D. 507. After the award, if the title is disputed, the claimant should bring an action on the award when the dispute as to his right to recover can then be determined. Arbitrator only assesses amount.

Chap. 8.**CHAPTER VIII.****WORKING AGREEMENTS, RUNNING POWERS AND LEASES.**

IN the absence of statutory authority no existing railway company would have any right or power to enter into a working agreement with another railway company, or to exercise running powers over the line of another, or to take a lease of the line of another.

Statutory
powers.

Apart from any particular provisions there may be in the special Acts of some of the existing companies, those companies in general derive such powers as they have of entering into engagements of the above nature from the provisions of the Railways Clauses Act, 1845 (see as to working, sections 87 and 88 ; as to leasing, sections 112, 113, *post*, Appendix), and of the Railways Clauses Act, 1863 (sections 22 and 29, *post*, Appendix), or from having obtained a certificate from the Board of Trade under the Railway Companies Powers Act, 1864 (*post*, Appendix).

The two first mentioned of the above enactments, namely, the Railways Clauses Acts, 1845 and 1863, will only be applicable to light railways so far as they are incorporated in the order authorising the light railway. See Light Railways Act, sections 11, 12 (1), *post*, pp. 68, 70.

Under
Railway
Clauses
Acts.

The Railways Clauses Act, 1845, the first of the above Acts, does not allow one company to give to the other a legal right to the exclusive use of its railway in cases where the special Act contains no power to lease the line (*Midland Railway Company v. Great Western Railway Company*, L. R. 8 Ch. 841 ; *Great Northern Railway Company v. Manchester, Sheffield and Lincolnshire Railway Company*, 5 L. T. (N.S.) 667), and in the absence of statutory powers, an agreement by one company to take a lease of the railway of another is regarded by the courts as void (*East Anglian Railway Company v. Eastern Counties*

Railway Company, 11 C. B. 775 ; 21 L. J. C. P. 23) ; **Chap. 8.**
 whilst the second of the above Acts requires the agreements permitted by it to be authorised by the special Act, and to be approved by the Railway Commissioners, who, by section 10 of the Regulation of Railways Act, 1873 (*post*, Appendix), are substituted for the Board of Trade in this matter.

The third of the above mentioned enactments, the Railway Companies Powers Act, 1864, was passed for the purpose of enabling ordinary railway companies to obtain certain powers without the necessity of applying for a special Act. See p. 147, *post*. Among these powers are included those of entering into agreements for the working or maintenance of the railway, but the procedure to obtain a certificate under the Act, although less costly than a special Act of Parliament, would appear to be of a more cumbrous character than that proposed for light railways under the Light Railways Act. Its provisions may, to some extent, be of use as affording a guide for the framing of orders under the Light Railways Act, but, except for this purpose, it would seem unimportant, in considering the steps to be taken in promoting a light railway.

Orders under the Light Railways Act permitting agreements for working, or leasing, or for running powers over light railways will doubtless, in general, be applications or modifications of the two first mentioned enactments, probably, amongst other things, substituting the approval of the Light Railway Commissioners, or of the Board of Trade, for that of the Railway Commissioners. As to giving powers to existing railway companies to enter into such agreements, and as to obtaining the concurrence of the shareholders generally of such existing companies, see further *ante*, p. 35.

In some cases where a council, company, body, or individual, makes the light railway with a view to its being leased to, or worked by others, it may be possible to frame

Chap. 8. the order so as to include all the terms of the agreement between them, and thus avoid the necessity of any subsequent approval of the terms ; indeed, in cases under section 5 (*post*, p. 62), this will generally, in all probability, be the case, though it is not necessary that it should be.

Power
to be in
order.

In all cases where power is desired to enter into working or leasing arrangements, or to grant or take running powers, such power should be provided for by the order. See sections 3, 11, *post*, pp. 60, 68.

THE LIGHT RAILWAYS ACT, 1896.

(59 & 60 VICT. CAP. 48.)

An Act to facilitate the Construction of Light Railways in Great Britain.
[14th August, 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows;— **Sect. 1.**

1. (1.) For the purpose of facilitating the construction and working of light railways in Great Britain, there shall be established a commission, consisting of three commissioners, to be styled the Light Railway Commissioners, and to be appointed by the President of the Board of Trade. (a) **Establishment of Light Railway Commission.**

(2.) It shall be the duty of the Light Railway Commissioners to carry this Act into effect, and to offer, so far as they are able, every facility for considering and maturing proposals to construct light railways. (b)

(3.) If a vacancy occurs in the office of any of the Light Railway Commissioners by reason of death, resignation, incapacity, or otherwise, the President of the Board of Trade may appoint some other person to fill the vacancy, and so from time to time as occasion may require.

(4.) There shall be paid to one of the Commissioners such salary, not exceeding one thousand pounds a year, as the Treasury may direct.

(5.) The Board of Trade may, with the consent of the Treasury as to number and remuneration, appoint and employ such number of officers and persons as they think necessary for the purpose of the execution of the duties of the Light Railway Commissioners under this Act, and may remove any officer or person so appointed or employed. (c)

(6.) The said salary and remuneration, and all expenses of the Light Railway Commissioners incurred with the sanction of the Treasury in the execution of this Act shall, except so far as provision is made for their payment by or under this Act, be paid out of moneys provided by Parliament.

Sect. 1. (7.) The Commissioners may act by any two of their number.

(8.) The powers of the Light Railway Commissioners shall, unless continued by Parliament, cease on the thirty-first day of December, one thousand nine hundred and one.

(a) The first Commissioners appointed are : The Earl of Jersey, K.C.M.G. (chairman), A. R. Fitzgerald, Esq., Barrister-at-Law, and Colonel Boughey, R.E., C.S.I. The last-named gentleman is the salaried Commissioner under sub-section (4).

(b) In moving the second reading of the Light Railways Bill in the House of Lords, Lord Dudley stated that it was intended that the local inquiries of the Commissioners should not be of a merely judicial or administrative kind, but that the Commissioners should also help and advise the promoters of light railways in any way that they could, carrying on this work in a sympathetic and informal manner. The above provision is, doubtless, intended to enable the Commissioners to fulfil this intention. For their duties under the Act, see more particularly sections 7, 8, 11, 16, 18, and 23.

(c) The President of the Board of Trade has appointed Mr. Bret Ince, Barrister-at-Law, to be Secretary to the Commission. The offices of the Commission are at 23, Great George Street, London, S.W. Rule 31, *post*.

The Rules regulating the procedure where a scheme has been matured, and it is proposed to make a formal application for an order to the Commissioners will be found, *post*, pp. 87—96.

Applica-
tion for
orders
authoris-
ing light
railways.

2. An application for an order authorising a light railway under this Act shall be made to the Light Railway Commissioners, and may be made—

- (a.) By the council of any county, borough, or district, through any part of which the proposed railway is to pass ; or
- (b.) By any individual, corporation, or company ; or
- (c.) Jointly by any such councils, individuals, corporations, or companies.

Applications will be received at two stated periods, namely, May and November, except in 1896, when it must be in December. See rule 27, *post*, p. 93.

Although this section provides that any corporation or company may apply for an order authorising a light railway, this must apparently be read subject to the qualification that such application shall be within the scope of the powers of such corporation or company. For this reason parish councils, although incorporated, could not properly apply for an order, as they are not authorised to work or construct a railway, as other councils are by section 3.

Powers of
local
authorities
under
order.

3. (1.) The council of any county, borough, or district, may if authorised by an order under this Act—

- (a.) Undertake themselves to construct and work, or to contract for the construction or working of, the light railway authorised ;
- (b.) Advance to a light railway company, either by way of loan or as part of the share capital of the com-

pany, or partly in one way and partly in the other, Sect. 3.
any amount authorised by the order ;

- (c.) Join any other council or any person or body of persons in doing any of the things above mentioned ; and
- (d.) Do any such other act incidental to any of the things above mentioned as may be authorised by the order.

(2.) Provided that—

- (a.) An order authorising a council to undertake to construct and work or to contract for the construction or working of a light railway, or to advance money to a light railway company, shall not be made except on an application by the council made in pursuance of a special resolution passed in manner directed by the First Schedule to this Act ; and

- (b.) A council shall not construct or work or contract for the construction or working of any light railway wholly or partly outside their area, or advance any money for the purpose of any such railway, except jointly with the council of the outside area, or on proof to the satisfaction of the Board of Trade that such construction, working, or advance is expedient in the interests of the area of the first-mentioned council, and in the event of their being authorised so to do their expenditure shall be so limited by the order as not to exceed such amount as will, in the opinion of the Board of Trade, bear due proportion to the benefit which may be expected to accrue to their area from the construction or working of the railway.

As to the powers of councils generally under this Act, see Chapter II., *ante*, p. 12 ; and see as to what provisions may be inserted in the order for the protection of councils, section 11 (*post*, p. 68) ; as to the provision of capital and expenses, section 16 (*post* p. 73) and Chapter VI., *ante*, p. 39 ; as to advances by the Treasury, sections 4, 5, and 6 ; as to joint committees, section 17 and Schedule III., *post*, pp. 74, 84.

For Schedule I., see *post*, p. 82.

In Scotland as to the local authorities upon which these powers are conferred, see section 26, sub-section (2). As to restrictions on the power of district committees, *ibid.*, sub-section (6), *post*, p. 79.

4. (1.) Where the council of any county, borough, or district, have advanced or agreed to advance any sum to a light railway company, the Treasury may also agree to make an advance to the company by lending them any sum not exceeding one quarter of the total amount required for the purpose of the light railway and not exceeding the amount for the time being advanced by the council. Loans by Treasury.

Sect. 4. Provided that the Treasury shall not advance money to a light railway company under this section, unless at least one-half of the total amount required for the purpose of the light railway is provided by means of share capital, and at least one-half of that share capital has been subscribed and paid up by persons other than local authorities.

(2.) Any loan under this section shall bear interest at such rate not less than three pounds two shillings and sixpence per centum per annum as the Treasury may from time to time authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer, and shall be advanced on such conditions as the Treasury determine.

(3.) Where the Treasury advance money to a light railway company under this section, and the advance by the council to the company is made in whole or part by means of a loan, the loan by the Treasury under this section shall rank *pari passu* with the loan by the council.

"Light railway company" and "share capital" are defined in section 28, *post*, p. 81. See, however, p. 45, *ante*.

A loan under this section will be an ordinary advance as distinguished from a special advance authorised by the next section. As to the limitation on amount of advance, see section 6.

An estimate of the expenses of the proposed railway must be made in the prescribed form. Rules 25 and 26, *post*, pp. 92, 93.

Special
advances
by Trea-
sury.

5. (1.) Where it is certified to the Treasury by the Board of Agriculture that the making of any light railway under this Act would benefit agriculture in any district, or by the Board of Trade that by the making of any such railway a necessary means of communication would be established between a fishing harbour or fishing village and a market, or that such railway is necessary for the development of or maintenance of some definite industry, but that owing to the exceptional circumstances of the district the railway would not be constructed without special assistance from the State, and the Treasury are satisfied that a railway company existing at the time will construct and work the railway if an advance is made by the Treasury under this section, the Treasury may, subject to the limitation of this Act as to the amount to be expended for the purpose of special advances, agree that the railway be aided out of public money by a special advance under this section.

Provided that—

(a.) The Treasury shall not make any special advance unless they are satisfied that landowners, local authorities, and other persons locally interested

have by the free grant of land or otherwise given all reasonable assistance and facilities in their power for the construction of the railway; and Sect. 5.

- (b.) A special advance shall not in any case exceed such portion not exceeding one-half of the total amount required for the construction of the railway as may be prescribed by rules to be made by the Treasury under this Act; and
- (c.) Where the Treasury agree to make any such special advance as a free grant, the order authorising the railway may make provision as regards any parish that, during a period not exceeding ten years to be fixed by the order, so much of the railway as is in that parish shall not be assessed to any local rate at a higher value than that at which the land occupied by the railway would have been assessed if it had remained in the condition in which it was immediately before it was acquired for the purpose of the railway, but before such provision is made in any order the local and rating authorities of every such parish shall be informed of the intention to insert such provision, and shall be entitled to be heard. The order may authorise the Board of Trade to extend any such period.

(2.) A special advance under this section may be a free grant or a loan or partly a free grant and partly a loan.

(3.) Any free grant or loan for a special advance under this section shall be made on such conditions and at such rate of interest as the Treasury direct.

Not more than 250,000*l.* may be expended on special advances. See next section.

There appears to be no provision as to the manner in which the Boards of Agriculture or of Trade are to be supplied with information to enable them to certify the Treasury as herein provided.

Sub-section (1) (a). As to the power of limited landowners to make free grants of land or otherwise assist the construction, see section 19, *post*, p. 75, and Chapter III., *ante*, p. 27.

Sub-section (1) (c). As to making good the deficiency in the poor rate and land tax during the construction of the line, see the Lands Clauses Consolidation Act, 1845, *post*, Appendix, p. 192. As to powers of parish council, see p. 16, *ante*.

In Scotland for Board of Trade and Board of Agriculture in the above section, read Secretary of State for Scotland, section 26 (1), and as to carrying out sub-section (1) (e), see *ibid.*, sub-section (9), *post*, p. 81.

6. (1.) The total amount advanced by the Treasury under this Act shall not at any one time exceed one million pounds, of which a sum not exceeding two hundred and fifty thousand pounds may be expended for the purpose of special advances under this Act. (a)

Limitation on amount of advance and provision of money by

Sect. 6.
National
Debt
Commis-
sioners.

(2.) The National Debt Commissioners may lend to the Treasury, and the Treasury may borrow from the National Debt Commissioners, such money as may be required for the purpose of advances by the Treasury under this Act, on such terms as to interest, sinking fund, and period of repayment (not exceeding thirty years from the date of the loan) as may be agreed on between the National Debt Commissioners and the Treasury.

(3.) The sums so lent by the National Debt Commissioners shall be repaid out of money provided by Parliament for the purpose, and if and so far as that money is insufficient shall be charged on, and payable out of, the consolidated fund, or the growing produce thereof.

(a.) See section 5. Where the special advance is a loan which is repaid, the amount repaid may be used again for a special advance.

Considera-
tion of
applica-
tion by
Light
Railway
Commis-
sioners.

7. (1.) Where an application for authorising a light railway under this Act is made to the Light Railway Commissioners, those Commissioners shall, in the first instance, satisfy themselves that all reasonable steps have been taken for consulting the local authorities, including road authorities, through whose areas the railway is intended to pass, and the owners and occupiers of the land it is proposed to take, and for giving public notice of the application, and shall also themselves by local inquiry and such other means as they think necessary possess themselves of all such information as they may consider material or useful for determining the expediency of granting the application.

(2.) The applicants shall satisfy the Commissioners that they have—

(a.) Published once at least in each of two consecutive weeks, in some newspaper circulating in the area or some part of the area through which the light railway is to pass, an advertisement describing shortly the land proposed to be taken and the purpose for which it is proposed to be taken, naming a place where a plan of the proposed works and the lands to be taken, and a book of reference to the plan, may be seen at all reasonable hours, and stating the quantity of land required; and

(b.) Served notice in the prescribed manner on every reputed owner, lessee, and occupier of any land intended to be taken, describing in each case the land intended to be taken, and inquiring whether the person so served assents to or dissents from the

taking of his land, and requesting him to state any objections he may have to his land being taken. **Sect. 7.**

The plan and book of reference shall be in the prescribed form, and for the purposes of this section the expression "prescribed" shall mean prescribed by rules made under this Act.

(3.) The Commissioners shall before deciding on an application give full opportunity for any objections to the application to be laid before them, and shall consider all such objections, whether made formally or informally.

(4.) If after consideration the Commissioners think that the application should be granted, they shall settle any draft order submitted to them by the applicants for authorising the railway, and see that all such matters (including provisions for the safety of the public and particulars of the land proposed to be taken) are inserted therein, as they think necessary for the proper construction and working of the railway.

(5.) The order of the Light Railway Commissioners shall be provisional only, and shall have no effect until confirmed by the Board of Trade in manner provided by this Act.

(6.) Where an application for a light railway has been refused by the Light Railway Commissioners, the applicants, if the council of any county, borough, or district, may appeal against such refusal to the Board of Trade, who may, at any time if they think fit, remit the application or any portion thereof to the said Commissioners for further consideration with or without special instructions.

Sub-section (1). The expression "local authorities" is not defined in the Act. It includes in this sub-section county, borough, and district councils and road authorities. It is, perhaps, not clear whether parish councils in general when not road authorities, are included. As to this, however, see *ante*, p. 15; sections 2 (a), 11 (b) of the Act; cf. Rules 3, 22, 27 (c), *post*, pp. 88, 92, 94; the Public Health Act, 1875, ss. 4, 5; and 40 & 41 Vict. c. 66, s. 3. The road authorities are now, generally speaking, as follows:—

Roads which are main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the bridges carrying them, are under the authority of the county council, except those main roads which any urban authority has claimed to retain. Local Government Act, 1888, s. 11, sub-sects. (1), (2).

In urban districts section 144 of the Public Health Act, 1875, made the urban sanitary authorities the exclusive highway authorities within their respective districts. These are now the borough or urban district councils, and they are the road authorities for all roads except those main roads over which the county council is the authority.

In rural districts section 25 of the Local Government Act, 1894, transferred to the rural district council all the powers of any highway authority in the district, so that the rural district council became the road authority,

Sect. 7. but that section contains a proviso that the council of any county may by order postpone the operation of the section for a term not exceeding three years from the appointed day, or such further period as the Local Government Board may, on the application of such council, allow. The "appointed day" for such purposes is the day on which the members of the first-elected councils came into office—about the month of November, 1894. In cases where the transfer has been postponed the road authorities may be the surveyors of highway parishes, highway boards in highway districts, or highway authorities appointed under local Acts. See "Shaw's Parish Law" (8th edit.), p. 349.

Section 26 of the Local Government Act, 1894, provides that it is the duty of every district council to prevent stoppage of rights of way, and to prevent any unlawful encroachment on any roadside waste within their district, but this does not apply to main roads, the wastes of which are under the control of the county council. Local Government Act, 1888, s. 11.

Rules have been made prescribing the procedure to be adopted under this section. They are printed, *post*, p. 87.

As to the prescribed form for the plan and book of reference, see the Rules 5—20, *post*; and as to the prescribed manner of serving the notices, see Rules 21—26, *post*.

It should be noted that "sections," though required by the rules, are not included in the above requisites. The Board of Trade has full power to make rules under section 15 (2), *post*, p. 72.

Sub-section (3). See *ante*, Chapter I., pp. 7, 8, and Rules 2 and 31, *post*, pp. 87, 95.

Sub-section (4). The proposed order must be drafted by the promoters and submitted to the Commission. These orders will probably take a form very similar to the private Acts of Parliament authorising railways. The Commissioners, in accordance with section 1, will probably advise promoters of light railways upon the drafting of such orders. Section 11, *post*, p. 68, contains the provisions which may be made in the order.

Sub-section (5). See section 8.

Submis-
sion of
order to
Board of
Trade for
confirma-
tion.

8. (1.) The Commissioners shall submit any order made by them under this Act to the Board of Trade for confirmation, accompanied by such particulars and plans as may be required by the Board, and shall also make and lay before the Board with the order a report stating the objections which have been made to the application, and the manner in which they have been dealt with, and any other matters in reference to the order which the Commissioners may think fit to insert in the report.

(2.) The Board of Trade shall give public notice of any order so submitted to them in such manner as they think best for giving information thereof to persons interested, and shall also state in the notice that any objections to the confirmation of the order must be lodged with the Board and the date by which those objections must be lodged.

(1.) The order is made pursuant to section 7 (4). Sections 9 and 10 deal with the duties of the Board of Trade. Section 9 also provides that the Commissioners shall give the Board any information or assistance which they may require.

9. (1.) The Board of Trade shall consider any order submitted to them under this Act for confirmation with special reference to— **Sect. 9.**
 Consideration of order by Board of Trade.

(a.) The expediency of requiring the proposals to be submitted to Parliament; and

(b.) The safety of the public; and

(c.) Any objection lodged with them in accordance with this Act.

(2.) The Light Railway Commissioners shall, so far as they are able, give to the Board of Trade any information or assistance which may be required by the Board for the purpose of considering any order submitted to them or any objection thereto.

(3.) If the Board of Trade on such consideration are of opinion that by reason of the magnitude of the proposed undertaking, or of the effect thereof on the undertaking of any railway company existing at the time, or for any other special reason relating to the undertaking, the proposals of the promoters ought to be submitted to Parliament, they shall not confirm the order.

(4.) The Board of Trade shall modify the provisions of the order for ensuring the safety of the public in such manner as they consider requisite or expedient.

(5.) If any objection to the order is lodged with the Board of Trade and not withdrawn, the Board of Trade shall consider the objection and give to those by whom it is made an opportunity of being heard, and if after consideration they decide that the objection should be upheld, the Board shall not confirm the order, or shall modify the order so as to remove the objection.

(6.) The Board of Trade may, at any time, if they think fit, remit the order to the Light Railway Commissioners for further consideration, or may themselves hold or institute a local inquiry, and hear all parties interested.

Sub-sections (1) (a) and (3). This practically gives the Board of Trade power to determine whether a railway is to be a light one or not. Their discretion, as to requiring the proposals to be submitted to Parliament, would seem to be governed by sub-section (3).

Sub-sections (1) (b) and (4). Under this heading the weight and speed of the trains will be provided for, and the question determined as to the application or non-application of the Acts mentioned in Schedule II. *post*, p. 82. See section 11; and see also Chapter I., *ante*, p. 3.

Sub-sections (1)(c) and (5). As to hearing objections, see section 15 (1), and Chapter I., *ante*, p. 10. The right of objectors to be heard is thus made a

Sect. 9. statutory right. They will be entitled to appear either by themselves or by agents. *Reg. v. St. Mary Abbots* [1891], 1 Q.B. 378.

Sub-section (3). As to what the Commissioners are to submit to the Board, see section 8 (1).

Confirma-
tion of
order by
Board of
Trade.

10. The Board of Trade may confirm the order with or without modifications as the case may require, and an order so confirmed shall have effect as if enacted by Parliament, and shall be conclusive evidence that all the requirements of this Act in respect of proceedings required to be taken before the making of the order have been complied with.

An order when confirmed will have the effect of superseding or repealing all enactments inconsistent with it, so far as they would otherwise apply to the subject matter of the order. If the order is one beyond the powers delegated by the Legislature to the Commissioners, it may, to that extent, be open to question. Cf. *Institute of Patent Agents v. Lockwood* [1894], A. C. 347, pp. 359, 360; *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896], A. C. 348.

As to amending the order, see section 24, *post*, p. 78.

Provisions
which
may be
made by
the order.

11. An order under this Act may contain provisions consistent with this Act for all or any of the following purposes—

- (a.) The incorporation, subject to such exceptions and variations as may be mentioned in the order, of all or any of the provisions of the Clauses Acts as defined by this Act. Provided that where it appears to the Board of Trade that variations of the Lands Clauses Acts are required by the special circumstances of the case, the Board of Trade shall make a special report to Parliament on the subject, and that nothing in this section shall authorise any variation of the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement; and
- (b.) The application, if and so far as may be considered necessary, of any of the enactments mentioned in the Second Schedule to this Act (being enactments imposing obligations on railway companies with respect to the safety of the public and other matters); and
- (c.) Giving the necessary powers for constructing and working the railway; including power to make agreements with railway and other companies for the purpose; and
- (d.) Giving any railway company any power required for carrying the order into effect; and

- (e.) The constitution as a body corporate of a company for the purpose of carrying out the objects of the order; and Sect. 11.
- (f.) The representation on the managing body of the railway of any council who advance, or agree to advance, any money for the purpose of the railway; and
- (g.) Authorising a council to advance or borrow money for the purposes of the railway and limiting the amount to be so advanced or borrowed, and regulating the terms on which any money is to be so advanced or borrowed; and
- (h.) The manner in which the profits are to be divided, where an advance is made by a council to a light railway company as part of the share capital of the company; and
- (i.) The proper audit of the accounts of the managing body of the railway where the managing body is not a local authority and the time within which the railway must be constructed; and
- (j.) Fixing the maximum rates and charges for traffic; and
- (k.) In the case of a new company, requiring the company to make a deposit, and providing for the time of making and the application of the deposit; and
- (l.) Empowering any local authority to acquire the railway; and
- (m.) Any other matters, whether similar to the above or not, which may be considered ancillary to the objects of the order or expedient for carrying those objects into effect.

(a) The Clauses Acts are defined in section 28. The proviso as to the Lands Clauses Acts is apparently intended to prevent their provisions from being modified except under special circumstances. Some sections, however, such as section 92, which prevents the whole of a house or building from being taken, and which would prevent part of a garden from being acquired, will no doubt require modification in certain cases. See note thereto, *post*, Appendix, sections 69 to 80 of the Lands Clauses Act, 1845, may be varied pursuant to section 14 of this Act, *post*, p. 72.

Section 9 is varied by section 19 of this Act, *post*, p. 75.

The words "with respect to the purchase and taking of land otherwise than by agreement" form the heading to sections 16—68 of the Act, *post*, Appendix. These sections are not in any case to be varied by the order. It may be noted, however, that they are very extensively varied by the Light Railway Act itself in section 13, *post*, p. 71. See this matter fully discussed in Chapter VII., *ante*, p. 48.

In Scotland the Clauses Acts are defined in section 26 (7), *post*, p. 80.

- Sect. 11.** (b) See the Second Schedule and notes thereto, *post*, p. 82.
 (c) and (d). See Chapters II., III., IV., and VIII., *ante*, pp. 12, 26, 32, and 56; as to a council working a railway, see section 3, *ante*, p. 60.
 (e) See Chapter V., *ante*, p. 37.
 (g) If a council is to be authorised to borrow or advance money, it must be a party to the application. Section 3 (2) (a), *ante*, p. 61. Provisions as to borrowing are contained in section 16 (2), (3), (4), *post*, p. 73. See Chapter VI., *ante*, p. 37.
 (h) As to the application of such profits, see section 16 (5), *post*, p. 74.
 (j) These will no doubt be based on the maximum rates and classifications contained in the Railway (Rates and Charges) Order Confirmation Acts, 1891 and 1892, made pursuant to the Railway and Canal Traffic Act, 1888.
 (k) This deposit is for the protection of landowners whose land is taken compulsorily. As to its application, see the Parliamentary Bonds and Deposit Act, 1892, *post*, Appendix. The subject is discussed in Chapter VI., *ante*, p. 44. See also Standing Orders, *post*, Appendix.
 (l) This power cannot be afterwards obtained in an amending order without the consent of the company. Section 24 (c), *post*, p. 78.

Applica-
tion of
general
Railway
Acts.

12. (1.) The Clauses Acts, as defined by this Act (a) and the enactments mentioned in the Second Schedule (b) to this Act, shall not apply to a light railway authorised under this Act except so far as they are incorporated or applied by the order authorising the railway.

(2.) Subject to the foregoing provisions of this Act and to any special provisions contained in the order authorising the railway, the general enactments relating to railways shall apply to a light railway under this Act in like manner as they apply to any other railway; and for the purposes of those enactments, and of the Clauses Acts so far as they are incorporated or applied by the order authorising the railway, the light railway company (c) shall be deemed a railway company, and the order under this Act a special Act, and any provision thereof a special enactment. Provided that a light railway shall not be deemed to be a railway within the meaning of the Railway Passenger Duty Act, 1842, and that no duties shall hereafter be levied in respect of passengers conveyed on a light railway constructed under this Act in respect of the conveyance of such passengers upon such railway.

5 & 6 Vict.
c. 79.

(a) Section 28, *post*, p. 81, and for Scotland, see section 26 (7), and as to incorporation, see section 11 (a). These Acts will be found in the Appendix.

(b) *Post*, p. 82. These Acts will also be found printed in the Appendix.

(c) A light railway company is defined in section 28.

The general enactments which will apply to a light railway without being incorporated in or applied by the order authorising the light railway are very numerous. The more important of these are as follows:—

1. The Railway and Canal Traffic Acts, 1854—1894, which are defined in the Short Titles Act, 1896, as:

The Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31).

The Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48).

- The Board of Trade Arbitrations Act, 1874, Part II. (37 & 38 Sect. 12. Vict. c. 40).
- The Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25).
- The Railway and Canal Traffic Act, 1892 (55 & 56 Vict. c. 44).
- The Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54).
- II. The Railway Regulation Acts, 1840—1893, with the exceptions mentioned in Schedule II. These Acts are defined in the Short Titles Act, 1896, as being—
- The Railway Regulation Act, 1840 (3 & 4 Vict. c. 97).
- The Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), (Schedule II. excepts sections 4—6, 9, and 10).
- The Railway Regulation Act, 1844 (7 & 8 Vict. c. 85).
- The Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), (Schedule II. excepts sections 19, 20, 22, and 27—29).
- The Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78), (Schedule II. excepts section 5).
- The Railway Regulation Act, 1873 (36 & 37 Vict. c. 76), (Schedule II. excepts sections 4 and 6).
- The Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), (Schedule II. excepts the whole of this Act).
- The Railways Regulation Act, 1893 (56 & 57 Vict. c. 29).
- III. The Cheap Trains Acts of 1844, 1858 and 1883 (namely, 7 & 8 Vict. c. 85 ; 21 & 22 Vict. c. 75, and 46 & 47 Vict. c. 34) (section 3 of the last being excepted by Schedule II.).
- IV. The Conveyance of Mails Act (1 & 2 Vict. c. 98).
- V. The Railway Companies Arbitration Act, 1859 (22 & 23 Vict. c. 59).
- VI. The Railway Companies Securities Act, 1866 (29 & 30 Vict. c. 108).
- VII. The Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict. c. 50).

13. (1.) Where any order under this Act incorporates the Mode of settling Lands Clauses Acts, any matter which under those Acts purchase-money may be determined by the verdict of a jury, by arbitration, or by two justices, shall for the purposes of the order be referred to and determined by a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator then by the Board of Trade, and the provisions of this Act shall apply with respect to the determination of any such matter in lieu of those of the Lands Clauses Acts relating thereto. Provided that in determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway. of land.

(2.) The Board of Trade may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on any such arbitration, and may, by such rules, limit the cases in which the costs of counsel are to be allowed.

Sect. 13. (3.) The Arbitration Act, 1889, shall apply to any arbitration under this section.

52 & 53 Vict. c. 49. The effect of this section is discussed in Chapter VII., *ante*, p. 48, and in the notes to the Lands Clauses Acts and the Arbitration Act, 1889, which will be found in the Appendix. As to the incorporation of the Lands Clauses Acts, see section 11 (*a*), *ante*, p. 68.

(2.) The power to make rules in this case is really a limitation on the general power to make rules contained in section 15 (2).

In Scotland the above section is considerably modified by section 26 (3), *post*, p. 79, the arbitration provisions of the Scotch Lands Clauses Acts being made applicable with certain variations as to expenses. For the Lord Chancellor read the Lord President of the Court of Session, *ibid.*, sub-section (4).

Payment of purchase money or compensation. **14.** Any order under this Act may, notwithstanding anything in the Lands Clauses Acts, authorise the payment to trustees of any purchase money or compensation not exceeding five hundred pounds.

This will enable sections 69—80 of the Lands Clauses Act, 1845, to be varied. As to the effect of this variation, see Chapter III., *ante*, p. 31.

Provisions as to Board of Trade. **15. (1.)** If the Board of Trade hold a local inquiry for the purposes of this Act, Part I. of the Board of Trade Arbitrations, &c., Act, 1874, shall apply to any inquiry so held as if—

37 & 38 Vict. c. 40. (a.) the inquiry was held on an application made in pursuance of a special Act; and

(b.) the parties making the application for the order authorising the light railway, and in the case of an inquiry held with reference to an objection made to any such application the persons making the objection in addition, were parties to the application within the meaning of section three of the Act.

(2.) The Board of Trade may make such rules as they think necessary for regulating the procedure under this Act, whether before the Board of Trade or before the Light Railway Commissioners, and any other matters which they may think expedient to regulate by rule for the purpose of carrying this Act into effect.

(3.) There shall be charged in respect of proceedings under this Act before the Board of Trade or the Light Railway Commissioners such fees as may be fixed by the Treasury on the recommendation of the Board of Trade.

(4.) Any expenses of the Board of Trade under this Act shall, except so far as provision is made for their payment by or under this Act, be defrayed out of moneys provided by Parliament.

(5.) The Board of Trade shall present to Parliament **Sect. 15.**
annually a report of their proceedings and of the proceedings
of the Light Railway Commissioners under this Act.

(1.) The Board of Trade Arbitration Act, 1874, Part I., will be found
in the Appendix.

(2.) Rules as to the application before the Commissioners will be
found, *post*. No rules have yet been issued regulating procedure before
the Board of Trade. As to rules regulating the cost of arbitrations as to
compensation, see section 13 (2), *ante*, p. 71. The rules must not be
inconsistent with the general purposes of the Act. See *Irving v. Askew*,
L. R. 5 Q. B. 208, 211.

(3.) See Rule 30, *post*, p. 95.

16. (1.) The council of any county, borough, or district **Expenses**
may pay any expenses incurred by them and allowed by the **of local**
Light Railway Commissioners with reference to any applica- **authori-**
tion for an order authorising a light railway under this Act, **ties.**
in the case of a county council as general expenses, in the
case of a borough council out of the borough fund or rate,
and in the case of a district council other than a borough
council as general expenses under the Public Health Acts.

Provided that any expenses incurred by a county council
under this Act may be declared by the order authorising the
railway or, in the event of an unsuccessful application for
such an order, by the Light Railway Commissioners, to be
exclusively chargeable on certain parishes only in the
county, and those expenses shall be levied accordingly as
expenses for a special county purpose under the Local **51 & 52**
Government Act, 1888. **Vict. c. 41.**

(2.) Where the council of any county, borough, or district
are authorised to expend any money by an order autho-
rising a light railway under this Act, they may raise the
money required,—

- (a.) if the expenditure is capital expenditure, by borrowing
in manner authorised by the order; and
- (b.) if the expenditure is not capital expenditure, as if it
was on account of the expenses of an application
under this Act.

(3.) The Board of Trade may from time to time on the
application of any council extend, subject to the limitations
of this Act, the limit of the amount which the council are
authorised by an order under this Act to borrow, or to
advance to a light railway company, and the limit so
extended shall be substituted for the limit fixed by the order.

(4.) Where an order under this Act authorises any council
to borrow for the purposes of a light railway, suitable pro-
vision shall be made in the order for requiring the replace-
ment of the money borrowed within a fixed period not
exceeding sixty years, either by means of a sinking fund or
otherwise.

Sect. 16. (5.) Any profits made by a council in respect of a light railway shall be applied in aid of the rate out of which the expenses of the council in respect of the light railway are payable.

(6.) Where a rate is levied for meeting any expenditure under this Act, the demand note for the rate shall state, in a form prescribed by the Local Government Board, the proportion of the rate levied for that expenditure.

(1.) See the effect of this discussed in Chapter II., *ante*, p. 22. General expenses of rural district councils are payable out of a common fund to be raised out of the poor rate of the parishes in a district. Public Health Act, 1875, s. 229. In urban districts they are charged on and defrayed out of the district fund and general district rate. *Ibid.*, section 207. As to the borough fund or rate, see the Municipal Corporations Act, 1882, ss. 139, 144.

County councils will pay these expenses out of the general county account of the county fund, which, if insufficient to meet the general expenses, is replenished by contributions levied on the whole administrative county and assessed on all the parishes in the county. Local Government Act, 1888, s. 68 (2), (4). Special county purposes means any purposes from contribution to which any portion of the county is for the time being exempt. It is replenished by contributions levied on any parishes liable to be assessed for those purposes. *Ibid.*, sub-sections (3), (5).

(2.) As to borrowing, see Chapter VI., *ante*, p. 41. As to the powers of councils to advance money, see section 3, *ante*, p. 60.

(4.) As to the power to make provision, see section 11 (*g*).

In Scotland this section is considerably varied by section 26 (5), *post*, p. 79. For Local Government Act, 1888, read Local Government (Scotland) Act, 1889.

Joint
com-
mittees.

17. (1.) The councils of any county, borough, or district, may appoint a joint committee for the purpose of any application for an order authorising a light railway under this Act, or for the joint construction or working of a light railway, or for any other purpose in connexion with such a railway for which it is convenient that those councils should combine.

(2.) The provisions of the Local Government Act, 1888, or of the Local Government Act, 1894, as the case may be, with respect to joint committees, shall apply to any joint committee appointed for the purpose of this Act by any councils who could appoint a joint committee under those Acts, but where the councils have no power under those Acts to appoint a joint committee the provisions in the Third Schedule (*a*) to this Act shall apply.

(*a*) *Post*, p. 84.

In Scotland read the Local Government (Scotland) Act, 1889, and the Local Government (Scotland) Act, 1894, s. 26 (8), *post*, p. 80.

As to joint committees of county councils, see section 81 of the Local Government Act, 1888; of district councils, section 57 of the Local Government Act, 1894. There appear to be no provisions in these Acts for joint committees consisting of members of a county and district council. In such a case the provisions in the third schedule of this Act will apply.

51 & 52
Vict. c. 41.
56 & 57
Vict. c. 73.

18. Where a company have power to construct or work a railway, they may be authorised by an order under this Act to construct and work or to work the railway or any part of it as a light railway under this Act. **Sect. 17.**

Working of ordinary railway as light railway.

A somewhat similar power exists already under sections 27—29 of the Regulation of Railways Act, 1868, *post*, p. 246. The Board of Trade have thereby power to authorise a company which has power to construct or work a railway to construct and work, or to work as a light railway, the whole or any part of such railway, subject to such regulations and conditions as the Board of Trade may impose, and subject to certain restrictions as to weight and speed.

19. (1.) Where any person has power, either by statute or otherwise, to sell and convey any land for the purpose of any works of a light railway, he may, with the sanction of the Board of Agriculture given under this section, convey the land for that purpose either without payment of any purchase money or compensation or at a price less than the real value, and may so convey it free from all incumbrances thereon. **Power of owners to grant land or advance money for a light railway.**

(2.) Whenever any person who is a landowner within the meaning of the Improvement of Land Act, 1864, contributes any money for the purpose of any works of a light railway, the amount so contributed may, with the sanction of the Board of Agriculture given under this section, be charged on the land of the landowner improved by the works in the same manner and with the like effect as in the case of a charge under that Act. **27 & 28 Vict. c. 114.**

(3.) The Board of Agriculture shall not give their sanction under this section unless they are satisfied that the works for which the land is conveyed or the money is contributed will effect a permanent increase in the value of the land held by the same title or of other land of the same landowner exceeding, in the case of a conveyance of land, that which is, in the opinion of the Board of Agriculture, the real value of the land conveyed or the difference between that value and the price, as the case may be, and in the case of a contribution of money the amount contributed: Provided also, that if the land proposed to be conveyed is subject to incumbrances, the Board of Agriculture, before giving their sanction under this section, shall cause notice to be given to the incumbrancers, and shall consider the objections, if any, raised by them.

(1.) This section refers to limited owners such as corporations, tenants in tail and for life, guardians, committees of lunatics, trustees, and executors. If the order authorising the light railway incorporates sections 6 and 7 of the Lands Clauses Consolidation Act, 1845, these incapacitated persons will thereby be empowered to sell, but apart from that Act, there are various statutes enabling various limited owners to sell

Sect. 19. subject to certain conditions and restrictions, as, for example, the Settled Land Acts, 1882—1890; the Lunacy Act, 1890; and the Municipal Corporations Act, 1882. Except for this section they must sell for the market price. See Chapter III., *ante*, p. 27. Section 20 extends this power to Crown lands.

(2.) Section 11 of the Improvement of Land Act, 1864, contains the interpretation of "landowner." See *post*, Appendix, where the material provisions of that Act are set out.

(3.) A statement whether the consent of the Board of Agriculture has been obtained must accompany the application to the Commissioners. Rule 27 (*g*), *post*, p. 94.

Power to
grant
Crown
lands.

20. The Commissioners of Woods shall, on behalf of Her Majesty, have the like powers to convey Crown lands as are by this Act conferred upon persons having power, either by statute or otherwise, to sell and convey lands, except that in the case of Crown lands the sanction of the Treasury shall be substituted for the sanction of the Board of Agriculture.

This power to grant land for nothing or at less than its value, as provided by section 19, is by this section extended to Crown lands.

Provision
as to
commons.

21. (1.) No land being part of any common, and no easement over or affecting any common, shall be purchased, taken, or acquired under this Act without the consent of the Board of Agriculture, and the Board shall not give their consent unless they are satisfied that, regard being had to all the circumstances of the case, such purchase, taking, or acquisition is necessary, that the exercise of the powers conferred by the order authorising the railway will not cause any greater injury to the common than is necessary, and that all proper steps have been taken in the interest of the commoners and of the public to add other land to the common (where this can be done) in lieu of the land taken, and where a common is divided to secure convenient access from one part of the common to the other.

(2.) The expression "common" in this section shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1878, and any town or village green.

Sub-sect. (1.)—As to the procedure to purchase or take part of a common, see the Lands Clauses Consolidation Act, 1845, ss. 99—107, *post*, Appendix. The company would be bound to provide such access as is herein provided, if section 68 of the Railways Clauses Consolidation Act, 1845, were incorporated in the order, *post*, Appendix. A statement whether the consent of the Board of Agriculture has been obtained must accompany the application to the Commissioners. Rule 27 (*g*), *post*, p. 94.

Sub-sect. (2.)—The Inclosure Acts, 1845—1882, are fifteen in number. See Short Titles Act, 1896. Section 11 of the Inclosure Act, 1845 (8 & 9 Vict. c. 118), contains the description of land liable to be enclosed under these Acts and is as follows :—

11. All such lands as are hereinafter mentioned, (that is to say,) all lands subject to any rights of common whatsoever and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons, or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the engagement thereof; all gated and stinted pastures in which the property of the soil or some part thereof is in the owners of the cattle gates or other gates or stints, or any of them; and also all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattle gates or other gates or stints, or any of them; all land held, occupied, or used in common, either at all times or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; all land in which the property or right of or to the vesture or herbage, or any part thereof during the whole or any part of the year, or the property or right of or to the wood or underwood growing or to grow thereon, is separated from the property of the soil; and all lot meadows and other lands the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise, shall be land subject to be inclosed under this Act. Sect. 21.

Section 12 contains a proviso that wastes of manors or lands subject to indefinite common rights at all times are not to be inclosed without the previous direction of Parliament. Section 13 excepts the New Forest and the Forest of Dean. Parts of the latter, however, are now included. See 29 & 30 Vict. c. 70, s. 1; metropolitan commons are also excepted.

The Metropolitan Commons Acts, 1866 to 1878, are defined by the Short Titles Act, 1896, as—

The Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122).

The Metropolitan Commons Amendment Act, 1869 (32 & 33 Vict. c. 107).

The Metropolitan Commons Act, 1878 (41 & 42 Vict. c. 71).

The first of these Acts provides in section 3 that the term "common" means land subject at the passing of this Act to any right of common, and section 4 enacts that "this Act shall apply to any common the whole or any part whereof is situated within the metropolitan police district as defined at the passing of this Act." Section 2 of the Amendment Act, 1869, provides that to the above interpretation of the term "common" shall be added, "and any land subject to be included under the provisions of the 8 & 9 Vict. c. 118."

22. If any objection to any application for authorising a Preservation light railway is made to the Light Railway Commissioners, or if any objection to any draft order is made to the Board of Trade on the ground that the proposed undertaking will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery, the Commissioners and the Board of Trade respectively shall consider any such objection, and give to those by whom it is made a proper opportunity of being heard in support of it. tion of
scenery
and objects
of historical
interest.

As to making and hearing of objections before Commissioners, see section 7, *ante*, p. 64, and see pp. 7, 8, *ante*; by Board of Trade, sections 8 and 9, *ante*, pp. 66, 67.

23. Any junction of a light railway authorised under this Junctions Act with any existing railway shall so far as is in the with

Sect. 23. opinion of the Board of Trade reasonably practicable avoid interference with lines of rails used for passenger traffic.
existing
railways.

Generally, as to making of junctions, see sections 9—12 of the Railways Clauses Act, 1863, *post*, Appendix.

Amend-
ment
of order.

24. An order authorising a light railway under this Act may be altered or added to by an amending order made in like manner and subject to the like provisions as the original order.

Provided that—

- (a.) The amending order may be made on the application of any authority or person ; and
- (b.) The Board of Trade, in considering the expediency of requiring the proposals for amending the order to be submitted to Parliament, shall have regard to the scope and provisions of the original order ; and
- (c.) The amending order shall not confer any power to acquire the railway except with the consent of the owners of the railway.

As to making the original order, see sections 7—11. As to applications under this section, see Rule 32, *post*, p. 95 ; and as to notices, Rules 23 and 24, *post*, p. 92.

Provision
as to
telegraphs.
41 & 42
Vict. c. 76.

25. The definition of “ Act of Parliament ” in the Telegraph Act, 1878, shall include an order authorising a light railway under this Act.

Section 6 of the Telegraph Act, 1878, empowers the Postmaster-General to establish telegraphic lines on railways, tramways, &c., authorised by an Act of Parliament passed after January 1st, 1878.

Applica-
tion to
Scotland,

26. This Act shall apply to Scotland with the following modifications :—

- (1.) In section five of this Act the expression “ Secretary for Scotland ” shall be substituted for the expressions “ Board of Agriculture ” and “ Board of Trade ” respectively, occurring in that section ;
- (2.) References to the council of any county, borough, or district, shall be construed as references to the county council of any county, or the town council, or where there is no town council the police commissioners, of any burgh, or the commissioners of any police burgh, or the district committee of any district under the Local Government (Scotland)

52 & 53
Vict. c. 50.

Act, 1889; or in any county where there is no district committee any two or more parish councils may combine; Sect. 26.

- (3.) "Arbiter" shall be substituted for "arbitrator," and that arbiter shall be deemed to be a single arbiter within the meaning of the Lands Clauses Acts, and in lieu of the provisions of the Arbitration Act, 1889, the provisions of the Lands Clauses Acts with respect to an arbitration shall apply, except the provisions of the said Acts as to the expenses of the arbitration, in lieu of which the following provision shall have effect, namely, the expenses of the arbitration and incident thereto shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses, or any part thereof, shall be paid, and may tax or settle the amount of expenses to be so paid, or any part thereof, and may award expenses to be paid as between agent and client;
- (4.) The Lord President of the Court of Session shall be substituted for the Lord Chancellor;
- (5.) The money necessary to defray expenditure, not being capital expenditure incurred by a county council in pursuance of this Act, shall be raised by a rate imposed along with but as a separate rate from the rate for maintenance of roads (hereinafter referred to as "the road rate") leviable under the Roads and Bridges (Scotland) Act, 1878, upon ^{41 & 42} lands and heritages within the county, or the ^{Vict. c. 51.} district, or the parish, as the case may be. The money necessary to defray expenditure similarly incurred by a town council, or police commissioners, or burgh commissioners shall be raised by a rate imposed along with but as a separate rate from the police assessment or burgh general assessment, as the case may be. If the expenditure incurred is capital expenditure it shall be raised by borrowing in the manner authorised by the order, the rate chargeable for repayment of capital, including interest and expenses, being the same rate as is liable for maintenance as aforesaid;
- (6.) The provisions relating to district councils shall apply to district committees or combinations of parish councils, subject to the following modifications—
- (a.) A district committee shall not be entitled to make an application under section two

Sect. 26.

hereof except with the consent of the county council given at a special or statutory meeting of the council, of which one month's special notice, setting forth the purpose of the meeting, shall have been sent to each councillor,

- (b.) A resolution to give such consent shall not be passed by the council unless two-thirds of the councillors present and voting at the special or statutory meeting concur in the resolution,
- (c.) Nothing in this Act shall authorise a district committee to raise money by rate or loan, but any money necessary to defray expenditure, not being capital expenditure incurred by it in pursuance of this Act, shall be raised by the county council by a rate imposed along with but as a separate rate from the road rate; and any money necessary to defray capital expenditure shall be raised by the county council by borrowing in the manner authorised by the order, as in section sixteen hereof mentioned;
- (7.) The expression "Clauses Acts" shall mean the Lands Clauses Acts, the Railway Clauses Consolidation (Scotland) Act, 1845, the Companies Clauses Consolidation (Scotland) Act, 1845, the Companies Clauses Act, 1863, the Railways Clauses Act, 1863, and the Companies Clauses Act, 1869;
- (8.) References to the Local Government Act, 1888, and the Local Government Act, 1894, shall be construed as references to the Local Government (Scotland) Act, 1889, and the Local Government (Scotland) Act, 1894;
- (9.) In order to carry out in Scotland the provisions contained in sub-section (1) (c) of section five of this Act, it shall be the duty of the assessor of railways and canals, as regards any parish to which the said sub-section (1) (c) applies, to enter on his valuation roll either the annual value of the light railway within such parish ascertained in terms of the Valuation of Lands (Scotland) Acts, or the annual value at which the land occupied by or for the purposes of the light railway would have been assessed

52 & 53
 Vict. c. 50.
 57 & 58
 Vict. c. 58.

if it had remained in the condition in which it was immediately before it was acquired for the purposes of the railway, whichever is less ; Sect. 28.

- (10.) Where a light railway constructed under the powers of this Act is owned or leased by an existing railway company, such light railway shall not be valued by the said assessor as part of the general undertaking of the railway company, but shall be valued as a separate undertaking.

- (1.) For section 5, see *ante*, p. 62.
 (2.) See more particularly sections 2, 3, 7, 11, 16, and 17.
 (3.) See section 13 (1), (3), *ante*, p. 71.
 (4.) See section 13 (2).
 (5.) This is in lieu of section 16, *ante*, p. 73.
 (6.) Cf. sections 2, 3, *ante*, p. 60.
 (7.) The Lands Clauses Acts, as regards Scotland, are by the Interpretation Act, 1889 :—
 The Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19).
 The Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106).
 (9.) *Ante*, p. 62.

27. This Act shall not extend to Ireland.

Extent of
Act.

28. In this Act, unless the context otherwise requires,—

The expression “light railway company” includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by this Act, or who are working the same under any working agreement :

Defini-
tions.

The expression “Clauses Acts” means the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, and the Companies Clauses Acts, 1845 to 1889 :

The expression “share capital” includes any capital, whether consisting of shares or of stock, which is not raised by means of borrowing.

The Clauses Acts, as far as they are material, will be found in the Appendix, *post*, p. 97.

By the Interpretation Act, 1889, the expression “Lands Clauses Acts” shall mean, as regards England and Wales :—

The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

The Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106).

The Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18).

The Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15) ;
 and any Acts for the time being in force amending the same.

- Sect. 28.** To these, therefore, must be added—
 — The Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11).
 The Companies Clauses Acts, 1845—1889, are defined in the Short Titles Act, 1896, as—
 The Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16).
 The Companies Clauses Act, 1863 (26 & 27 Vict. c. 118).
 The Companies Clauses Act, 1869 (32 & 33 Vict. c. 48).
 The Companies Clauses Consolidation Act, 1888 (51 & 52 Vict. c. 48).
 The Companies Clauses Consolidation Act, 1889 (52 & 53 Vict. c. 37).

Short title. **29.** This Act may be cited as the Light Railways Act, 1896.

SCHEDULES.

FIRST SCHEDULE.

MODE OF PASSING SPECIAL RESOLUTIONS.

1. The resolution approving of the intention to make the application must be passed at a meeting of the council.
 2. The resolution shall not be passed unless a month's previous notice of the resolution has been given in manner in which notices of meetings of the council are usually given.
 3. The resolution shall not be passed unless two-thirds of the members of the council present and voting concur in the resolution.
- As to the application of this schedule, see section 3, *ante*, p. 60.

SECOND SCHEDULE.

ENACTMENTS RELATING TO SAFETY, &c.

Session and Chapter.	Title or Short Title.	Enactment referred to.
2 & 3 Vict. c. 45.	An Act to amend an Act of the fifth and sixth years of the reign of his late Majesty King William the Fourth relating to highways.	The whole Act.(a)
5 & 6 Vict. c. 55.	The Railway Regulation Act, 1842.	Sections four, five, six, nine, ten.(b)
9 & 10 Vict. c. 57.	An Act for regulating the gauge of railways.	The whole Act.(c)

Sched.

Session and Chapter.	Title or Short Title.	Enactment referred to.
31 & 32 Vict. c. 119.	The Regulation of Railways Act, 1868.	Sections nineteen, twenty, twenty-two, twenty-seven, twenty-eight, and twenty-nine.(d)
34 & 35 Vict. c. 78.	The Regulation of Railways Act, 1871.	Section five.(e)
36 & 37 Vict. c. 76.	The Railway Regulation Act (Returns of Signal Arrangements, Working, &c.), 1873.	Sections four and six.(f)
41 & 42 Vict. c. 20.	The Railway Returns (Continuous Brakes) Act, 1878.	The whole Act.(g)
46 & 47 Vict. c. 34.	The Cheap Trains Act, 1883	Section three.(h)
52 & 53 Vict. c. 57.	The Regulation of Railways Act, 1889.	The whole Act.(i)

As to the application of this schedule, see section 12, *ante*, p. 70.

These enactments will be found in the Appendix, *post*.

(a) This Act provides for gates where the railway crosses a highway.

(b) Sections 4, 5, and 6 deal with notices being sent to the Board of Trade before the railway is opened for use. Sections 9 and 10 amend the above-mentioned Act as to gates at crossings.

(c) This Act prescribes the gauge of railways.

(d) Section 19 deals with proceedings in case of non-consumption of smoke.

Section 20 with providing smoking-carriages.

Section 22 with communications between passengers and the companies' servants.

Sections 27—29 with light railways.

(e) Section 5 extends sections 4—6 of 5 & 6 Vict. c. 55, *supra*.

(f) Section 6 also amends section 6 of the last-named Act.

Section 4 deals with returns as to the method of working the trains, signals, level crossings, and numerous other matters.

(g) This Act deals with returns to Board of Trade as to continuous brakes.

(h) This section makes provision for third class accommodation and workmen's trains.

(i) Sections 1, 2, and 3 of this Act give the Board of Trade power to order that various provisions shall be made for public safety, namely, as to adopting the block system, interlocking of points and signals, and continuous brakes.

Section 4 provides as to returns as to overtime.

Section 5 with penalties for avoiding payment of fare.

Section 6 with printing fare on passenger tickets.

Section 7 with bye-laws.

Sched.

THIRD SCHEDULE.**JOINT COMMITTEES.**

- (a.) Any council taking part in the appointment of a joint committee may delegate to the committee any power which the council may exercise for the purpose for which the committee is appointed.
- (b.) A council shall not be authorised to delegate to a joint committee any power of making a rate or borrowing money.
- (c.) Subject to the terms of the delegation the joint committee shall have the same power in all respects with respect to any matter delegated to them, as the councils appointing it or any of them.
- (d.) The members of the joint committee may be appointed at such times and in such manner, and shall hold office for such period, as may be fixed by the councils appointing them:
Provided that a member shall not hold office beyond the expiration of fourteen days after the day for the ordinary election of councillors of the council by which he was appointed, or in Scotland after the day for the ordinary election of councillors of the council of the county in which the district is situated.
- (e.) The costs of a joint committee shall be defrayed by the councils by whom the committee is appointed, in such proportions as they may agree upon, and in the event of their differing in opinion, as may be determined by the Board of Trade on an application by either council.
- (f.) When any of the councils joining in the appointment of a joint committee is a county or district council other than a borough council, the accounts of the joint committee shall be audited in like manner and with the like power to the officer auditing the accounts, and with the like incidents and consequences as the accounts of a county council.
- (g.) The chairman at any meeting of the committee shall have a second or casting vote.
- (h.) The quorum, proceedings, and place of meeting of a committee, whether within or without the area within which the committee are to exercise their authority, shall be such as may be determined by regulations jointly made by the councils appointing the committee, and in the event of their differing in opinion as may be determined by the Board of Trade on an application by either council.
- (i.) Subject to those regulations the quorum, proceedings, and place of meeting, whether within or without the area within which the committee are to exercise their jurisdiction, shall be such as the committee direct.

As to the application of this schedule, see section 17, *ante*, p. 74.

RULES: THEIR PURPORT AND EFFECT. Rules.

The Light Railways Act, 1896, and the Rules made thereunder (see *ante*, p. 6, section 15 (2) of the Act, *ante*, p. 72), contain the procedure to be followed in making the formal application for an Order under the Act. The application must be preceded by an advertisement published in each of two consecutive weeks in November, 1896, or in April or October of the subsequent years, in at least one local newspaper circulating in the area or part of the area through which the railway is to pass. Section 7 (2), *ante*, p. 64; Rules 1, 4, *post*, pp. 87, 88.

The advertisement is intended to give general notice of the intended application, and must describe generally the line of the railway and its termini, the lands proposed to be taken stating the quantity and the purpose for which it is proposed to take them, it must state the proposed gauge and the motive power of the railway, and must name a place where a plan of the proposed works and of the lands to be taken and a book of reference to the plan, and a section of the proposed works may be seen, and where copies of the draft order can be obtained on payment of not exceeding one shilling per copy. Rule 2, *post*, p. 87. An office in the locality of the company will probably be a convenient place. It must also be subscribed with the name of the promoters, and must state that objections should be made in writing to the Light Railway Commissioners in accordance with Rule 31, which gives the mode in which the Commissioners should be addressed. Rule 2, *post*, p. 87.

The plan and book of reference must be in the form prescribed by the Rules. Section 7 (2), (b). The Rules prescribing the form for plans, book of reference and sections are Rules 5—20, *post*, pp. 88—91.

The Commissioners have in the first instance to be satisfied that the local authorities have been consulted. Section 7 (1), *ante*, pp. 64—66, and also the owners and occupiers of the land it is proposed to take. *Ibid.*

Procedure
before ap-
plication.

Advertise-
ment.

Plans,
book of
reference
and sec-
tions.

Local au-
thorities.
Owners
and occu-
piers.

- Rules.** The owners, lessees and occupiers of the land which it is proposed to take, must be served with notice in the form and manner prescribed by the Rules. Section 7 (2), (b). These notices must be served in April and October; except in 1896 when they will be in November. Rules 21—24, *post*, p. 91; for form of notice, see *post*, p. 96.
- Service of notice.**
- Consulting local authorities.** It does not appear from the Act or Rules what is to be considered a sufficient consulting of the local authorities, though by Rule 3, *post*, p. 88, provision is made requiring copies of the draft order, of the plan and book of reference, and of the section, and of the estimate, together with a sheet or sheets of the ordnance map on a scale of not less than one inch to a mile with the railway indicated thereon to be deposited with the clerks of county, borough, district, and parish councils concerned. Probably it would be a sufficient consulting to send to each of the local authorities, including road authorities, a copy of the advertisement inserted as above mentioned in the local papers, with a letter inviting them to consider the scheme and communicate their views to the promoters, though where practicable it would be well to consult them at an earlier stage, and obtain where possible, their assistance or concurrence.
- Deposits with clerks of councils.**
- Deposits with Government Departments.** The promoters have also to deposit copies of the draft Order and other documents deposited with the clerks to the councils with the Board of Trade, and to deposit copies of the draft Order with the various Government Departments specified in Rule 4, *post*, p. 88.
- Estimate.** The times for making the above deposits are the months of May and November; but in 1896, in December.
- Service of notices.** An estimate of the cost, including that of acquiring the land, must be prepared in the form given in the rules. Rules 25, 26, pp. 92, 93; and deposited as above stated.
- Fee.** The Rules contain provision for the signing and service of notices (Rules 28, 29), and for the mode in which objections or other communications should be made, and addressed to the Commissioners. Rule 31.
- Times of application.** Before lodging any formal application with the Commissioners, a fee of 50*l.* has to be paid to the Board of Trade. The formal application to the Commissioners can only be made at the times stated in Rule 27, *post*, p. 93, namely May and November, and in 1896, December, and must be accompanied by the documents set forth in that rule. In the case of existing companies, the application must be accompanied by the certificate specified in that rule of the passing of the proper resolution by its members. See *ante*, pp. 35, 39, and *post*, p. 94. In the case of all corporate bodies the application must be under seal, *post*, p. 93.
- Application documents.**

In any case of difficulty as to the procedure to be adopted it is supposed that promoters will be at liberty to consult the Commissioners. See pp. 1, 6, 60.

Rules.
Consulting
Commissioners.

The Board of Trade has power to rescind, revoke, amend, or vary the rules from time to time as they may find necessary. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 32; and see Rule 33, *post*, p. 95.

The expressions used in the Rules under the Act have, unless a contrary intention appears, the same meaning as in the Act itself. The Interpretation Act, 1889, s. 31.

RULES MADE BY THE BOARD OF TRADE

WITH RESPECT TO APPLICATIONS TO THE LIGHT RAILWAY COMMISSIONERS FOR ORDERS AUTHORISING LIGHT RAILWAYS.*

Notice of Proposed Application.

1. Notice of intention to apply to the Light Railway Commissioners for an Order authorising a light railway, or for an amending Order, must be published by advertisement in each of two consecutive weeks in the month of April or of October, in at least one local newspaper circulating in the area or part of the area through which it is proposed to make the railway.

Notice by
advertisement.

See section 7 (2) of the Act, *ante*, p. 64.

2. The notice must describe generally the line of the railway and its termini, and the lands proposed to be taken, stating the quantity and the purpose for which it is proposed to take them; it must state the proposed gauge and motive power of the railway; it must be subscribed with the name of the person, company, or council responsible for the publication of the notice (hereinafter referred to as "the promoters"); and must name a place where a plan of the proposed works and of the lands to be taken and a book of

Contents
of notice.

* NOTE.—These Rules will regulate the procedure before the Light Railway Commissioners where a scheme for a light railway has been matured and it is intended to make a formal application for an Order.

The Commissioners will at all times be prepared to give every facility in their power for considering and maturing proposals for the construction of light railways to be submitted to them.

Rules. reference to the plan and a section of the proposed works may be seen at all reasonable hours, and where copies of the draft Order can be obtained on payment of not exceeding one shilling per copy.

The notice must state that objections should be made in writing to the Light Railway Commissioners in accordance with Rule 31.

As to objections, see section 7 (3) of the Act, *ante*, p. 65.

No particular gauge is prescribed by the Act.

Deposit
with local
authori-
ties.

3. Copies of the draft Order and of the plan and book of reference and section and of the estimate hereinafter mentioned, must be deposited by the promoters during the month of May or of November, with the clerk of the county council, and of every borough, district, and parish council in or through whose county, borough, district, or parish, any part of the railway is proposed to be made; and shall be open to inspection during office hours.

With the above documents there must also be deposited a sheet or sheets of the ordnance map, on the scale of not less than one inch to a mile, with the line of railway indicated thereon, so as to show its general course and direction.

See Standing Orders, *post*, and Rule 27 (c). *post*, p. 94.

As to the estimate, see Rules 25, 26, *post*, pp. 92, 93.

Deposits
with
Govern-
ment De-
partments.

4. Copies of the draft Order and of all the above documents, must be deposited by the promoters during the month of May or of November, with the Board of Trade, and copies of the draft Order with the Treasury, the Board of Agriculture, the Postmaster-General, the Commissioners of Customs and of Inland Revenue, the Admiralty, the War Office, the office of Woods and Forests, and the Office of Works, and with the Secretary for Scotland in the case of proposed railways in Scotland.

Provided that as regards the provisions of this rule and of Rules 1 and 3, in the year 1896 the month of November shall be substituted for the month of October, and the month of December for the month of November.

Plans, Book of Reference, and Sections.

Plans.

5. Every plan must be drawn to a scale of not less than four inches to the mile, and must describe the lands intended to be taken, and the line or situation of the whole of the railway (no alternative line or work being in any case permitted), and the lands in or through which it is to be made, or through which any communication to or from the railway shall be made.

6. Where it is the intention of the promoters to apply for powers to make any lateral deviation from the line of the proposed railway, the limits of such deviation shall be defined on the plan, and all lands included within such limits shall be marked thereon. **Rules.**
As to limits of deviation.

As to deviations during construction of railway, see sections 11—15 of the Railways Clauses Consolidation Act, 1845, *post*, p. 102.

7. Unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every one hundred feet, an enlarged plan shall be added of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden, either in the line of the proposed work, or included within the limits of the said deviation, on a scale of not less than a quarter of an inch to every one hundred feet. Buildings, &c., on enlarged scale.

8. The distances from one of the termini must be shown in miles and furlongs on the plan, and a memorandum of the radius of every curve not exceeding one mile in length, shall be noted on the plan in furlongs and chains. Distances to be marked.

9. Where tunnelling as a substitute for open cutting is intended, the same shall be marked by a dotted line on the plan, and no work shall be shown as tunnelling in the making of which it will be necessary to cut through or remove the surface soil. Tunneling to be marked.

10. If it be intended to divert widen or narrow any public carriage road, navigable river, canal, or railway, the course of such diversion and the extent of such widening or narrowing shall be marked on the plan. Diversion of roads, &c.

11. When a railway is intended to form a junction with an existing or authorised line of railway, the course of such existing or authorised line of railway shall be shown on the deposited plan for a distance of 800 yards on either side of the proposed junction on the same scale as the scale of the general plan. Case of junctions with other lines.

12. If it be intended to lay any part of the railway along a road or street, the plan shall show at what distance from an imaginary straight line drawn along the centre of such road or street it is proposed to lay the rails. Case of rails along road.

13. The book of reference shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses in the line of the proposed railway or within the limits of deviation as defined on the plan, and shall describe such lands and houses respectively. Book of reference.

Rules. The book of reference shall also contain the name of the road authority of any road or street along which it is proposed to lay any part of the railway.

As to subsequent correction of errors and omissions in plans and book of reference. See section 7 of the Railways Clauses Consolidation Act, 1845, *post*, p. 100.

Scale of sections.

14. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every one hundred feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed railway, the height of every embankment and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the railway or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section), near one of the termini of the railway.

In every section the line of the railway marked thereon shall correspond with the upper surface of the rails.

Vertical measures to be marked at change of gradient.

15. Distances on the datum line shall be marked in miles and furlongs, to correspond with those on the plan; a vertical measure from the datum line to the line of the railway shall be marked in feet and inches, or decimal parts of a foot, at the commencement and termination of the railway, and at each change of the gradient or inclination thereof; and the proportion or rate of inclination between every two consecutive vertical measures shall also be marked.

Height of railway over or depth under surface of roads, &c., to be marked.

16. Wherever the line of the railway is intended to cross any public carriage road, navigable river, canal, or railway, the height of the railway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts by which the railway will be carried over the same, shall be marked in figures at every crossing thereof, and where the railway will be carried across any such public carriage road or railway, on the level thereof, such crossing shall be so described on the section, and it shall also be stated if such level will be unaltered.

Generally as to the crossing of roads and interference therewith, see sections 46—67 of the Railways Clauses Consolidation Act, 1845, *post*, p. 112.

Cross sections in certain cases.

17. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any public carriage road or railway, which will be crossed by the railway, then the same shall be stated on the section, and each alteration shall be numbered; and cross sections in reference to the numbers, on a horizontal scale of not less

Rules.

than one inch to every three hundred and thirty feet, and on a vertical scale of not less than one inch to every forty feet shall be added which shall show the present surface of such road, canal, or railway, and the intended surface thereof, when altered; and the greatest of the present and intended rates of inclination of the portion of such road or railway intended to be altered shall also be marked in figures thereon, and where any public carriage road is crossed on the level, a cross section of such road shall also be added; and all such cross sections shall extend for two hundred yards on each side of the centre line of the railway.

18. Wherever the extreme height of an embankment, or the extreme depth of any cutting, shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures on the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct, or tunnel.

Embankments and cuttings.

As to deviations in the level of arches, viaducts, and tunnels, see section 13 of the Railways Clauses Consolidation Act, 1845, and section 4 of the Railways Clauses Act, 1863, *post*, p. 103 and 142.

19. Where tunnelling, as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, the same shall be marked on the section, and no work shall be shown as tunnelling, in the making of which it will be necessary to cut through or remove the surface soil.

Tunnelling and viaduct to be marked.

20. When a railway is intended to form a junction with an existing or authorised line of railway, the gradient of such existing or authorised line of railway shall be shown on the deposited section, and in connection therewith, and on the same scale as the general section, for a distance of 800 yards on either side of the point of junction.

In case of junctions gradient of existing line to be shown on section.

Notices to Owners, Lessees, and Others.

21. During the month of April or of October the promoters must serve a notice on the owners or reputed owners, lessees, or reputed lessees, and occupiers of all lands intended to be taken or being within the limits of deviation shown on the deposited plan, describing in each case the particular lands intended to be taken or being within such limits, and inquiring whether the person so served assents or dissents to the taking of such lands, and requesting him

Service of notices on land-owners and others.

Rules. to state any objections he may have to such lands being taken.

Every such notice shall be as nearly as may be in the form set out in the schedule to these Rules.

See section 7 (2) (b.) of the Act, *ante*, p. 64, and the definition of "owner" in section 3 of the Railways Clauses Consolidation Act, 1845, *post*, p. 98. For form, see p. 96, and as to service, Rule 29, p. 95.

Notice to owners of railway, &c.

22. During the month of April or October the promoters must also serve a notice of the intended application on the owner, or reputed owner, lessee, or reputed lessee, of any railway, tramway, or canal which will be crossed or otherwise interfered with by the proposed railway; and on the road authority (where other than a county, borough, district, or parish council) of any road or street along which it is proposed to lay any rails, or which will be otherwise interfered with by the proposed railway; and such notice shall state the place or places where a plan or plans of the proposed railway has or have been or will be deposited.

Provided that as regards the provisions of this rule and of Rule 21, in the year 1896 the month of November shall be substituted for the month of October.

As to road authorities, see note to section (7) of the Act, *ante*, p. 64.

Notice of relinquishment of works.

23. Where an amending order proposes to authorise the promoters to vary or to relinquish the whole or any part of a railway authorised by a former order, the promoters must during the month of April or October serve notice of the proposal on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of the lands in which any part of the said railway is situate.

As to amending Orders, see section 24 of the Act, *ante*, p. 78.

Notice of repeal of protective provisions.

24. Where an amending order proposes to repeal or alter any provision contained in a former order for the protection or benefit of any person, public body, or company specifically named, the promoters must during the month of April or October serve notice of the intention to repeal or alter such provision on every such person, public body, or company.

Estimate.

Estimates.

25. An estimate of the expenses of the proposed railway (including the expense of acquiring land and all incidental expenses) must be made and signed by the person making the same.

See Rule 3, *ante*, p. 88.

26. The estimate shall be in the following form or as near thereto as circumstances may permit :—

Estimate of the proposed Light Railway.

Rules.

						Whether Single or Double.	
Lines No.		
					miles	fgs.	chs.
Length of line			
Gauge			
						Cubic Yards	Price per Yard.
Earthworks :							
Cuttings—Rock							
Soft soil...							
Roads							
Total							
Embankments, including roads						Cubic Yards	
Bridges—Public roads						Number	
Accommodation bridges and works							
Viaducts							
Culverts and drains							
Metallings of roads and level crossings							
Gatekeepers' houses at level crossings							
Permanent way, including fencing :							
						miles	fgs. chs.
							Cost per mile.
							£ s. d.
						at	
Permanent way for sidings, and cost of junctions							
Stations							
Contingencies							Per cent.
Land and buildings :							
							a. r. p.
Total							£

The same details for each branch, and general summary of total cost.

Application to the Commissioners.

27. Every application to the Commissioners for an Order must be made in the month of May or of November except in the year 1896, when it must be made in the month of December, and must be in the case of a corporate body under the seal of such body, and in any other case signed by the promoter or promoters, or if there are more than two then by any three of them, and must be accompanied by—

(a.) A copy of the advertisement of the intention to apply for the Order;

See Rule 1, *ante*, p. 87.

(b.) Three copies of the draft Order and of each of the documents required by these Rules to be deposited;

(c.) A statement as to the proposed gauge and motive power of the railway;

(d.) A list of the owners, or reputed owners, lessees, or reputed lessees, and occupiers on whom notices

Documents to accompany application.

Rules.

have been served, and a statement as far as can then be made whether in each case they assent, dissent, or are neuter ;

See Rule 21, *ante*, p. 91.

- (e.) A list of the county, borough, district, and parish councils in or through any part of whose county district or parish any part of the railway is proposed to be made, and a statement whether or not they have intimated assent or dissent to the proposal ;

See Rule 22, *ante*, p. 92.

- (f.) A list of the railway, tramway, or canal companies (if any) on whom any notice has been served under these rules, and a statement whether or not they have intimated assent or dissent to the proposal ;

See Rule 22.

- (g.) A statement whether any consent of the Board of Agriculture required to any grant of land or to the acquisition of any common land proposed to be authorised by the draft order has been obtained ;

See sections 19 and 21 of the Act, *ante*, pp. 75, 76.

- (h.) A statement whether it is proposed that the council of any county borough or district shall expend or advance any money, and if so, of the nature and amount of such expenditure or advance ;

See section 3 of the Act, *ante*, p. 60.

- (i.) A statement whether it is proposed to apply to the Treasury for the advance of any money, and if so, of the amount of the advance sought ;

See sections 4 and 5 of the Act, *ante*, p. 61.

- (k.) A certificate that a fee of 50*l.* has been paid to the Board of Trade.

See Rule 30.

- (l.) A certificate, in the case of an application by an existing company, that the members of the company have assented to the application by such a resolution as is required by the Standing Orders of Parliament in the case of an application to Parliament by such company.

See these Orders, *post*, Appendix.

General Provisions as to Notices.

Authenti-
cation, &c.
of notices.

28. Notices and others such documents under these rules may be in writing or print, or partly in writing and partly in print ; and shall be sufficiently authenticated if signed by the clerk of the council, or by some principal officer of the company, or by the promoter or any two or more of the promoters ; on whose behalf the notice or other document is served.

29. Notices and any other documents required or authorised to be served under these rules may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises; or if there is no person on the premises who can be so served then by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice or other document was properly addressed and put into the post.

Rules.
Service of notices.

Any notice by these rules required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given without further name or description.

The power to serve by post notices required or authorised by these rules will be found most useful. The expression "ordinary course of post" does not refer to the mode in which letters are delivered to the particular person or institution addressed, but means the general course of post with regard to the delivery to persons resident in the district. (See *Kemp v. Wanklyn* [1894], 1 Q. B. 583.)

Fees.

30. Before lodging any application with the Commissioners a fee of 50*l.* must be paid by the promoters to the Board of Trade, by cheque in favour of an Assistant Secretary of the Board of Trade.

Fee payable to Board of Trade.

General.

31. All communications to the Commissioners should be on foolscap paper and written on one side only, and should be addressed to—

THE SECRETARY,
Light Railway Commission,
23, Great George Street,
London, S.W.

32. In the case of an application for an amending order, such of the requirements of these rules as are inapplicable will be dispensed with.

As to amending orders see section 24 of the Act.

33. These rules shall remain in force until modified by the Board of Trade.

COURTENAY BOYLE,
Secretary.

THE BOARD OF TRADE,
September, 1896.

Rules.

SCHEDULE.

FORM OF NOTICE TO LANDOWNERS AND OTHERS.

SIR,

We beg to inform you that application is intended to be made to the Light Railway Commissioners for an Order authorising a light railway from _____ to _____, and that the property mentioned in the annexed schedule or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said railway, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of _____ yards on either side of the said line which will be applied for.

We also beg to inform you that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the clerks of the (*specify county and other councils as the case may be*), on or before the last day of May [*or November*] and that copies of so much of the said plan and section as relates to the (*parish*) in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the (*clerk of the parish, district, or borough council*) on or before the _____ day of _____ on which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report whether you assent to or dissent from the proposed undertaking, you will oblige us by writing your answer of assent or dissent in the form left herewith, and by stating any objections you may have to your property being taken, and returning the same to us with your signature on or before the _____ day of _____ next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, &c.,

Schedule referred to in the foregoing notice describing the property therein alluded to:—

—	Parish, Township, Townland, or extra- parochial Place.	Number on Plans.	Descrip- tion.	Owner.	Leasee.	Occupier.
Property on the line of the proposed work, or within the limits of the deviation intended to be applied for.						

I, the undersigned, assent to [*dissent from*] my property being taken for the proposed work [*and my objections are that*].

APPENDIX.

THE CLAUSES ACTS.

An order under the Light Railways Act may contain provision for the incorporation of all or of any portion of "the Clauses Acts," and this incorporation may be with such "exceptions and variations" as appear requisite subject to the proviso that the compulsory clauses of the Lands Clauses Act if incorporated are not to be varied. "The Clauses Acts" are the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, and the Companies Clauses Acts, 1845—1889. See sections 11 and 28 of the Light Railways Act, and notes thereto.

THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

(8 VICT. CAP. 20.)

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the making of Railways.

1. This Act shall apply to every railway which shall by any Act which shall hereafter be passed be authorised to be constructed, and this Act shall be incorporated with such Act, and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act. **Sect. 1.**

"Undertaking" is defined in section 2, *infra*. This Act is only applicable to a railway under the Light Railways Act, 1896, so far as its provisions are incorporated by the order authorizing the railway. See Light Railways Act, ss. 11, 12 (1), 28.

And with respect to the construction of this Act and of other Acts to be incorporated therewith, be it enacted as follows :—

2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed authorizing the construction of a railway, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this

Interpretations in this Act
"Special Act :"
"pre-scribed :"

Sect. 2. Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; "the lands" and the expression "the lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof: and the expression "the undertaking" shall mean the railway and works, of whatever description by the special Act authorized to be executed.

The order authorising a light railway, or the order and the Light Railways Act, where the context requires it, is equivalent to "the special Act." See Light Railways Act, ss. 10, 12 (2). The word "lands" is defined in section 3, *infra*. A general enumeration of works to be executed will be found in section 16, *post*, p. 104.

Interpretations in this and the special Act: 3. The following words and expressions, both in this and the special Act, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number: Words importing the singular number only shall include the plural number; and words importing the plural number only shall include also the singular number:

Gender: Words importing the masculine gender only shall include females:

"Lands:" The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure:

"Lease:" The word "lease" shall include an agreement for a lease:

"Toll:" The word "toll" shall include any rate or charge or other payment payable under the special Act for any passenger, animal, carriage, goods, merchandise, articles, matters, or things conveyed upon the railway:

"Goods:" The word "goods" shall include things of every kind conveyed upon the railway:

"Month:" The word "month" shall mean calendar month:

"Superior Courts:" The expression "Superior Courts" shall mean Her Majesty's Superior Courts of Record at Westminster.

"County " The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"Owner:" Where under the provisions of this or the special Act any notice shall be required to be given to the owner of any lands, or where any Act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, or any Act incorporated therewith, would be enabled to sell and convey lands to the company:

"the Company:" The expression "the Company" shall mean the company or party which shall be authorized by the special Act to construct the railway:

"the Railway:" The expression "the railway" shall mean the railway and works by the special Act authorized to be constructed:

The expression "the Bank" shall mean the Bank of England, **Sect. 3.**
 where the same shall relate to moneys to be paid or deposited in "the Bank" :
 respect of lands situate in England.

By section 3 of the Interpretation Act, 1889, in all Acts subsequent to 1850, the expression "land" includes "messuages, tenements, and hereditaments, houses, and buildings of any tenure," unless the contrary intention appears. The expressions "oath" and "affidavit" in the case of persons allowed by law to affirm or declare instead of swearing include affirmation and declaration. See the Oaths Act, 1888 (51 & 52 Vict. c. 46).

The "Superior Courts" are now consolidated under the title of the "Supreme Court," of which "Her Majesty's High Court of Justice" and "Her Majesty's Court of Appeal" are the two divisions. They sit not at Westminster, but at the Courts of Justice. Where in any enactment the expression "Superior Courts" is used it will be understood to mean the "Supreme Court."

4. In citing this Act in other Acts of Parliament and in legal instrument, it shall be sufficient to use the expression "The Railways
 Clauses Consolidation Act, 1845." Short title of the Act.

5. And whereas it may be convenient in some cases, to incorporate with Acts hereafter to be passed some portion only of the provisions of this Act : Be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate. Form in which Portions of this Act may be incorporated in other Acts.

The descriptions thus given, which may be made use of in framing orders under the Light Railways Act, are as follows :

"With respect to the construction of this Act, and of other Acts to be incorporated therewith." Sections 2 to 5, both inclusive.

"With respect to the construction of the railway and the works connected therewith." Sections 6 to 24, both inclusive.

"With respect to the temporary occupation of lands near the railway during the construction thereof." Sections 30 to 44, both inclusive.

"With respect to the crossing of roads or other interference therewith." Sections 46 to 67, both inclusive.

"With respect to works for the accommodation of lands adjoining the railway." Sections 68 to 75, both inclusive.

"With respect to mines lying under or near the railway." Sections 77 to 85, both inclusive.

"With respect to the carrying of passengers and goods upon the railway, and the tolls to be taken thereon." Sections 86 to 107, both inclusive.

"With respect to the regulating of the use of the railway." Sections 108 to 111, both inclusive.

"With respect to leasing the railway." Sections 112 and 113.

"With respect to the engines and carriages to be brought on the railway." Sections 114 to 125, both inclusive.

Sect. 5.

"With respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices." Sections 140 to 159, both inclusive.

"With respect to the provision to be made for affording access to the special Act by all parties interested." Sections 162 and 163.

There is also a group of sections, namely sections 126 to 137, under the description, "With respect to the settlement of disputes by arbitration," but it is presumed that these will not be incorporated in any order authorising a light railway, as by the Light Railways Act, 1896, s. 13, the Arbitration Act, 1889, is expressly applied to arbitrations for settling the purchase money or compensation to be paid, and it would seem that to incorporate these sections would be inconvenient, and might be improper being inconsistent with the Light Railways Act. See section 11, *ante*, p. 68.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows:

The Construction of the Railway to be subject to the Provisions of this Act and the Lands Clauses Consolidation Act.

6. In exercising the power given to the company by the special Act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

The "said Lands Clauses Consolidation Act" is "the Lands Clauses Consolidation Act, 1845" (8 Vict. c. 18), *post*, p. 156. The compensation is (a.) for lands taken or used for the purposes of the railway, or (b.) injuriously affected by the construction thereof. See the Lands Clauses Act, 1845, ss. 63, 68, *post*, pp. 166, 167. Section 13 of the Light Railways Act contains special provisions as to the mode of determining compensation (*ante*, p. 71), and it would seem, therefore, that the latter part of this section from the words "and except" to the end should not be incorporated in an order authorising a light railway. With regard to enforcing payment of an amount awarded the provisions of the Arbitration Act, 1889, would appear sufficient. See Light Railways Act, s. 13, *ante*, p. 71. As to compensation generally, see *ante*, pp. 48—55.

Errors and Omissions in Plans to be corrected.

7. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special Act, or in the schedule to the special Act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, mis-statement, or erroneous description

arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

Sect. 7.

The "order authorising the railway" is the "special Act," or, if the context requires it, the Order and the Light Railways Act itself. See *ante*, p. 98.

If it is desired to substitute the Board of Trade or the Light Railway Commissioners for the two justices as the tribunal to correct errors such as this section deals with, the order must in incorporating this section so state. The clerk to the parish council has been by the Local Government Act, 1894, s. 17 (7) (56 & 57 Vict. c. 73), substituted for the parish clerk for the purposes of the above section; this and the following sections must be treated as amended accordingly.

8. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Works not to be proceeded with until Plans of all Alterations authorised by Parliament have been deposited.

9. The said clerks of the peace, parish clerks, and postmasters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.

Clerks of the Peace, &c., to receive Plans of Alterations, and allow Inspection.

7 Will. 4 & 1 Vict. c. 28.

The Act mentioned in the above section may be cited as "The Parliamentary Documents Deposit Act, 1837." See Standing Orders, *post*. It is probable that orders authorising light railways will make provision

Sect. 9. for the continued preservation inspection, and taking copies of the plans, books of reference, and sections deposited under the rules (*ante*, p. 88), before application, after the scheme has been sanctioned. The rules enable persons interested to have access to them before the line proposed is sanctioned. See Standing Order 29, Appendix, *post*; Rules 2—4, *ante*, pp. 87, 88; section 7 (2), *ante*, p. 64; and Rules 5—20, *ante*, pp. 88—91.

Copies of
plans, &c.
to be
evidence.

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

See note to section 9, *ante*.

It will probably be found desirable to vary this section if incorporated by the Order, and to entrust the powers given to justices to the Board of Trade or to the Light Railway Commissioners. There will be no approval by Parliament, as the Order is operative upon confirmation by the Board of Trade. Light Railways Act, s. 10.

Limiting de-
viation from
Datum Line
described on
sections, &c.

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gasworks, or waterworks affected by such deviation: Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by Act of Parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

Public
notice to
be given
previous to
making
greater
deviations.

12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood

where such deviation is intended to be made, three weeks at least before commencing to make such deviation ; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made ; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorize the making thereof, either simply, or with any such modification as shall seem proper to the Board of Trade ; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation except in conformity with such certificate.

Sect. 12.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

13. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly, and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Arches, tunnels, &c., to be made as marked on deposited Plans.

The powers of deviating may be extended by incorporating the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 4, *post*, p. 142.

14. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions ; (that is to say,)

Limiting deviations from gradients, curves, &c.

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows ; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest ; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid :

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorised by such certificate as aforesaid from the Board of Trade :

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorised by such certificate as aforesaid from the Board of Trade.

15. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing

Lateral deviations.

Sect. 15. through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special Act provided for in cases of unintentional errors in the said books of reference.

"In manner herein," that is in manner stated in section 7, *ante*, p. 100.

To calculate the deviation the distance is measured from the line of railway as actually laid down to *medium filum viæ* of the original railway as shown on the plan. *Finch v. London and North Western Railway Company*, 44 Ch. D. 330.

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|-------------------------------------|---|
| Works to be executed. | 16. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works ; (that is to say,) |
| Inclined planes, &c. | They may make or construct in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tram-roads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper ; |
| Alteration of course of rivers, &c. | They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper ; |
| Drains, &c. | They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway ; |
| Warehouses, &c. | They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper ; |
| Alterations and repairs. | They may from time to time alter, repair, or discontinue the before mentioned works or any of them, and substitute others in their stead ; and |
| General power. | They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway : |
| Provido as to damages. | Provided always, that in the exercise of the powers by this or the special Act granted the company shall do as little damage as can be, |

and shall make full satisfaction in manner herein and in the special Act, and any Act incorporated therewith, provided, to all parties interested for all damage by them sustained by reason of the exercise of such powers. **Sect. 18.**

An act is not to be considered "necessary" within this section merely because it enables the company to execute their works more economically. *Fenwick v. East London Railway Company*, L. R. 20 Eq. 544; *Attorney-General v. Metropolitan Railway Company* [1894], 1 Q. B. 384. As to compensation, see *ante*, pp. 48—55.

17. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of Her Majesty, . . . to be signified in writing under the hands of two of the Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, and of the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or the Commissioners for executing the Office of Lord High Admiral aforesaid for the time being, to be signified in writing under the hand of the Secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, and the said Lord High Admiral, or the said Commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this Act, it shall be lawful for the said Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, or the said Lord High Admiral, or the said Commissioners for executing the Office of Lord High Admiral, to abate and remove the same; and to restore the site thereof to its former condition at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

Works below high water mark not to be executed without the consent of the Lords of the Admiralty. [Now Board of Trade.]

By 25 & 26 Vict. c. 69, s. 6 (The Harbours Transfer Act, 1862), the section is to be read as if amended by the substitution of the Board of Trade for the Admiralty, that is for the Lord High Admiral or Commissioners for executing that office. See Interpretation Act, 1889, s. 12 (4).

18. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and incon-

Alteration of water and gas pipes, &c.

Sect. 18. — venience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

Company not to disturb pipes until they have laid down others.

19. Provided always, that it shall not be lawful for the company to remove or displace any of the mines or pipes (other than private service pipes), syphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mines or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

Pipes not to be laid contrary to any Act, and 18 inches surface road to be retained.

20. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Company to make good all damage.

21. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

When railway crosses pipes, company to make a culvert.

22. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs.

Penalty for obstructing supply of gas or water.

23. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct.

24. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power, in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence.

Sect. 24.

Penalty for obstructing construction of railway.

As to the recovery of penalties under the above and other sections of the Act, see the note to section 145, *post*, p. 138.

Sections 25—29 relate solely to Ireland.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows :

30. Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans ; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they intend to occupy such road, and shall pay to the owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or in case they differ about the compensation the same shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the said Lands Clauses Consolidation Act.

Company may occupy temporarily private roads within five hundred yards of the railway.

The order authorising the railway is the "special Act." See *ante*, p. 98. By section 13 of the Light Railways Act the compensation must be settled by an arbitrator as therein provided, and not by justices.

31. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company to object to the company making use of such road, on the ground that other roads such as the company are hereinbefore authorized to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same ; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given, and in the same manner as if in the provisions relative to such proceedings the word road or roads, or the words road and the land over which the same passes, as the case may require, had been substituted in such provisions for the word lands.

Power to owners and occupiers of road and land to object that other roads should be taken.

Sect. 32.

Power to
take tempo-
rary pos-
session of
land with-
out previous
payment of
price.

32. Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing spoil thereon;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side of the railway:

and in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds, and other buildings of a temporary nature: Provided always, that nothing in this Act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special Act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

Temporary possession is only to be taken if it is necessary, and by "necessary" in this section "reasonably necessary" is meant. *Morris v. Tottenham Railway Company* [1892], 2 Ch. 47.

Company to
give notice
previous to
such tempo-
rary pos-
session.

33. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said lands are required for any of the other

purposes hereinbefore mentioned the company shall (except in the cases aforesaid) give ten days' like notice thereof, and the company shall in such notices respectively state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be. **Sect. 33.**

The notice should state the specific purpose for which the land is required. *Poynder v. Great Northern Railway Company*, 16 Sim. 3.

34. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands. Service of notices on owners and occupiers of lands.

35. In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as herein-after mentioned. Power to owner to object that other lands ought to be taken.

36. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous Power to two justices to order that the lands and materials shall not be taken.

Sect. 36. consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

If it is desired to transfer this jurisdiction to the Board of Trade or Light Railways Commissioners, this and the following sections will require to be slightly varied by the order authorising the railway accordingly.

Power to justices to order other lands to be taken.

37. If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorized to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

Power to the justices to summon other owners before them.

38. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorized to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

The company to give sureties if required.

39. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

Company to separate the lands before using them.

40. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the

lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads.

Sect. 40.

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41. That if any land shall be taken or used by the company, under the provisions of this or the special Act, for the purpose of getting materials therefrom for the construction or repair of the railway or the accommodation works connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party after notice of the hearing the application shall have been given to the other party.

Lands taken for getting materials, &c., to be worked as the surveyor of owner may direct.

42. In all cases in which the company shall in exercise of the powers aforesaid enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

Owner of lands may compel company to purchase lands so temporarily occupied.

It may possibly be thought fit to vary or omit this section, as it may operate to enable excessive sums to be exacted for use, in order to avoid having to purchase. It is suggested that possibly a power given to the Board of Trade to order the purchase where they should consider it just might meet the case.

43. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special Act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he

Compensation to be made for temporary occupation.

Sect. 43. may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices in case the parties differ, and shall also, within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special Act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special Act granted, including the full value of all clay, stone, gravel, sand, and other thing taken from such lands.

It would appear advisable that the order authorising the railway should expressly vary this section, if incorporated, by substituting the Board of Trade for the two justices.

Compensation to be ascertained under the Lands Clauses Act.

44. The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

See Light Railways Act, s. 18.

Land to be taken for additional stations, &c.

45. And be it enacted, that it shall be lawful for the company, in addition to the lands authorised to be compulsorily taken by them under the powers of this or the special Act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,)

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences :

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

As to the powers of incapacitated persons to sell land for extraordinary purposes, see the Lands Clauses Consolidation Act, 1845, ss. 12—15, *post*.

And with respect to the crossing of roads or other interference therewith, be it enacted as follows :

Crossing of roads,

46. If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special Act) either such road shall be carried over the railway, or the railway shall be carried over such road by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of

the company : Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level. **Sect. 46.**

When the road is carried by a bridge over the railway, the road is part of the bridge, and the railway company becomes under the above section liable to keep it with the rest of the bridge and the approaches in repair accordingly. *Lancashire and Yorkshire Railway Company v. Mayor, &c., of Bury*, 14 App. Cas. 417. It may, therefore, in some cases be desirable to vary this section on incorporating in the order authorising the railway. A mere footpath is not within this section. *Re Beasley Heath Railway Company* [1896], 2 Q. B. 74.

47. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates ; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway ; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway ; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein : Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner, and under the like penalty as above directed with respect to the gates being kept closed across the road. Provision in cases where roads are crossed on a level.

The Railways Clauses Act, 1863, ss. 5—8, *post*, p. 142, contains further provisions as to such level crossings and enables the Board of Trade to require a bridge where for public safety it seems to them necessary.

48. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour ; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade. As to crossing of turnpike roads adjoining stations.

49. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special Act) be built in conformity with the following regulations ; (that is to say,) Construction of bridges over roads.

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a

Sect. 49.

turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road :

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road ; and in each of such cases the clear height of the springing of the arch shall not be less than twelve feet :

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road :

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

Construc-
tion of
bridges over
railway.

50. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special Act) be built in conformity with the following regulations ; (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet :

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road :

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

The width
of the
bridges
need not
exceed the
width of the
road in cer-
tain cases.

51. Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width in the case of a turnpike road or public carriage road than twenty feet : Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the

width of such road as so widened, or the maximum width herein or **Sect. 51.**
in the special Act prescribed for a bridge in the like case over or
under the railway.

52. Provided also, that if the mesne inclination of any road Existing inclinations of roads crossed or diverted need not be improved.
within two hundred and fifty yards of the point of crossing the
same, or the inclination of such portion of any road as may require
to be altered, or for which another road shall be substituted, shall
be steeper than the inclination hereinbefore required to be preserved
by the company, then the company may carry any such road over or
under the railway, or may construct such altered or substituted road
at an inclination not steeper than the said mesne inclination of the
road so to be crossed, or of the road so requiring to be altered, or for
which another road shall be substituted.

53. If, in the exercise of the powers by this or the special Act Before roads interfered with others to be substituted.
granted, it be found necessary to cross, cut through, raise, sink, or
use any part of any road, whether carriage road, horse road,
tramroad, or railway, either public or private, so as to render it
impassable for or dangerous or extraordinarily inconvenient to pas-
sengers or carriages, or to the persons entitled to the use thereof, the
company shall, before the commencement of any such operations,
cause a sufficient road to be made instead of the road to be interfered
with, and shall at their own expense maintain such substituted road
in a state as convenient for passengers and carriages as the road so
interfered with, or as nearly so as may be.

54. If the company do not cause another sufficient road to be so Penalty for not substituting a road.
made before they interfere with any such existing road as aforesaid,
they shall forfeit twenty pounds for every day during which such
substituted road shall not be made after the existing road shall have
been interrupted; and such penalty shall be paid to the trustees,
commissioners, surveyor, or other person having the management of
such road, if a public road, and shall be applied for the purposes
thereof, or in the case of a private road the same shall be paid to the
owner thereof, and every such penalty shall be recoverable with
costs by action in any of the superior courts.

Under this section the person in possession of a private way as tenant or
lessee is the "owner" and entitled to the penalty. *Mann v. Great Southern
and Western Railway Company*, 9 Ir. C. L. R. 105.

55. If any party entitled to a right of way over any road so Party suffering damage from interruption of road to recover in an action on the case.
interfered with by the company shall suffer any special damage by
reason that the company shall fail to cause another sufficient road
to be made before they interfere with the existing road, it shall be
lawful for such party to recover the amount of such special damage
from the company, with costs, by action on the case in any of the
superior courts, and that whether any party shall have sued for
such penalty as aforesaid or not, and without prejudice to the right
of any party to sue for the same.

56. If the road so interfered with can be restored compatibly Period for restoration of roads interfered with.
with the formation and use of the railway, the same shall be
restored to as good a condition as the same was in at the time when
the same was first interfered with by the company, or as near thereto

Sect. 56. as may be ; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow ; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties, having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period ; (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months.

Penalty for
failing to
restore road.

57. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed ; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Company to
repair road
used by
them.

58. If in the course of making the railway the company shall use or interfere with any road they shall from time to time make good all damage done by them to such road ; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices ; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per day as to such justices shall seem just ; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof : Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

If it is desired that the matter should be dealt with by the Board of Trade or by an arbitrator, this and the following sections should be varied by the order authorising the light railway.

Proceedings
on applica-
tion to jus-
tices to con-
sent to level
crossings of

59. When the company shall intend to apply for the consent of two justices, as hereinbefore provided, so as to authorize them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be

made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Sect. 59.

bridleways
and foot-
ways.

60. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner and subject to the like conditions as are hereinafter provided in the case of appeals in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Appeal
against the
determina-
tion of the
justices.

See the note to section 58, *supra*.

61. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

Company to
make suffi-
cient ap-
proaches and
fences to
bridleways
and foot-
ways cross-
ing on the
level.

62. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Justices to
have power
to order ap-
proaches
and fences
to be made
to highways
crossing on
the level.

See the note to section 58, *supra*.

63. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on

Screen for
roads to be

Sect. 63. such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said Board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said Board.

Penalty for failing to construct.

64. Where by any such certificate as aforesaid, the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion: and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Justices to have power to order repair of bridges, &c.

65. Where, under the provisions of this or the special Act, or any Act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair.

Under this section the justices will be the tribunal to impose the penalty specified.

Board of Trade empowered to modify the construction of certain roads, bridges, &c. where a strict compliance with the Act is impossible or inconvenient.

66. . . . In case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature required by the provisions of this or the special Act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorised by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade,

if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special Act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work ; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special Act : Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Sect. 66.

67. And be it enacted, that all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall for the purposes of this and the special Act, and any Act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved ; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company ; and all notices and other documents required by this or the special Act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

Authentication of certificates of the Board of Trade, service of notices, &c.

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows :

68. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway ; (that is to say,)

Gates, bridges, &c. :

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway, as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made ; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof :

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles ; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owner thereof shall so require, and the said other works as soon as conveniently may be :

Fences :

Sect. 68. Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be ; and such works shall be made from time to time as the railway works proceed :

Drains :

Watering places.

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places ; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be ; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places :

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

It will probably be thought desirable to vary these sections, before incorporation in the order authorising a light railway, by giving the Board of Trade or the arbitrator jurisdiction to determine which (if any) of such works are necessary.

Differences as to accommodation works to be settled by justices. 69. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices ; and such justices shall also appoint the time within which such work shall be commenced and executed by the company.

Execution of works by owners on default by the company. 70. If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs ; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed ; and if there be any dispute about such expenses the same shall be settled by two justices : Provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time nor use them in any other manner than is unavoidably necessary for the execution or repair of such accommodation works.

Power to owners of land to make additional accommodation works. 71. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier at any time, at his own

expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorised by two justices. **Sect. 71.**

72. If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer; nevertheless the company shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company. Such works to be constructed under the superintendence of the company's engineer.

73. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use. Accommodation works not to be required after five years.

74. Until the company shall have made the bridges or other proper communications which they shall under the provisions herein, or in the special Act, or any Act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses, and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway. Owners to be allowed to cross until accommodation works are made.

75. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriage, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings. Penalty on persons omitting to fasten gates.

This penalty will, like other penalties, be recoverable, if this section is incorporated, before justices.

76. And be it enacted, that this or the special Act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an Act Power to parties to make private branch railways communicating with the railway.

Sect. 76. passed in the sixth year of the reign of Her present Majesty, intituled An Act for the better Regulation of Railways, and for the Conveyance of Troops; and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned Act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other moneys for the passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions; (that is to say,)

Restrictions
and con-
ditions.

No such branch railway shall run parallel to the railway:

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel:

The persons making or using such branch railways shall be subject to all bye-laws and regulations of the company from time to time made with respect to passing upon or crossing the railway, and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

And with respect to mines lying under or near the railway, be it enacted as follows:

Company
not to be
entitled to
minerals.

77. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Mines lying
near the
railway not
to be worked
if the com-
pany willing
to purchase
them.

78. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same;

and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation. **Sect. 78.**

The compensation will be settled by an arbitrator. See the Light Railways Act, s. 13, *ante*, p. 71.

79. If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense incurred thereby, by action in any of the superior courts.

If company unwilling to purchase. owner may work the mines.

80. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Mining communications.

81. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses the same shall be settled by arbitration.

Company to make compensation for injury done to mines;

Sect. 82. 82. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to company to enter and inspect the working of mines. 83. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Penalty for refusal to inspect. 84. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

If mines improperly worked, the company may require means to be adopted for the safety of the railway. 85. If it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier by action in any of the superior courts.

And with respect to the carrying of passengers and goods upon the railway, and the tolls to be taken thereon, be it enacted as follows:

Company to employ locomotive power, carriages, &c. 86. It shall be lawful for the company to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special Act authorised to be taken by them.

It is supposed that in the order authorising the light railway a maximum scale of charges will be usually inserted for the carriage both of passengers and goods (including animals), but if this is not so the charges will be limited by the above restriction, and also by the ordinary law to what is reasonable. The meaning of the word "tolls" is not always the same in the different sections of the Act. In this section, for example, it means

charges for carriage; whilst in section 95, *post*, it is held not to include such charges as those for carrying (see *Scottish North Eastern Railway Company v. Anderson*, 1 Sc. Sess. Cas. (3rd series), 1056; *Brown v. Great Western Railway Company*, 9 Q. B. D. 744); and in section 97, *post*, it appears from the context that it applies merely to tolls, strictly so called, for use of the line by a person conveying goods in his own carriage. See *Wallis v. London and South Western Railway Company*, L. R. 5 Ex. 62. As to what it may, where the context permits, include, see section 3, *ante*, p. 98.

Sect. 86.

87. It shall be lawful for the company from time to time to enter into any contract with any other company, being the owners or lessees or in possession of any other railway, for the passage over or along the railway by the special Act authorised to be made of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriages of the company, or which shall pass over their line of railway, upon the payment of such tolls and under such conditions and restrictions as may be mutually agreed upon; and for the purpose aforesaid it shall be lawful for the respective parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways.

Company
empowered
to contract
with other
companies.

88. Provided always, that no such contract as aforesaid shall in any manner, alter, affect, increase, or diminish any of the tolls which the respective companies, parties to such contracts, shall for the time being be respectively authorised and entitled to demand or receive from any person or any other company, but that all other persons and companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the said railways, upon the same terms and conditions, and on payment of the same tolls as they would have been in case no such contract had been entered into.

Contracts
not to affect
persons not
parties
thereto.

89. Nothing in this or the special Act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of the realm, stage coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the company of any protection or privilege which common carriers or stage coach proprietors may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

Company
not to be
liable to a
greater ex-
tent than
common
carriers.

90. And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties: It shall be lawful, therefore, for the company subject to the provisions and limitations herein and in the special Act contained, from time to time to alter or vary the tolls by the special Act authorised to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided that all such tolls be at all times charged equally to all persons, and

Power to
vary.

Sect. 90. after the same rate, whether per ton per mile or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Tolls to be charged equally under like circumstances.

The order authorising the light railway is equivalent to the "special Act." See *ante*, p. 98. The word "tolls" includes in this section charges for carriage upon the railway of goods (including animals), and passengers. See note to section 86, *ante*, p. 124. The above section only requires equality as between goods carried between the same termini and carried under the same circumstances, and which are for carrying purposes of similar description. *Denaby Colliery Company v. Manchester, Sheffield, and Lincolnshire Railway Company*, 11 App. Cas. 97; *Great Western Railway Company v. Sutton*, L. R. 4 H. L. 226. As to undue preference see the Railway and Canal Traffic Acts.

How tolls to be calculated where railways amalgamated.

91. And whereas authority has been given by various Acts of Parliament to railway companies to demand tolls for the conveyance of passengers and goods and for other services over the fraction of a mile equal to the toll which they are authorized to demand for one mile: Therefore, in cases in which any railways shall be amalgamated with any other adjoining railway or railways, such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

Railway to be free on payment of tolls.

92. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special Act authorized to demand; and upon payment of the tolls from time to time demandable all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed as by this and the special Act directed, subject nevertheless to the provisions and restrictions of the said Act of the sixth year of Her present Majesty, intituled an Act for the better Regulation of Railways, and for the Conveyance of Troops, and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special Act conferred upon them.

5 & 6 Vict. c. 56.

List of tolls to be exhibited on a board.

93. A list of all the tolls authorized by the special Act to be taken, and which shall be exacted by the company, shall be published by the same being painted upon one toll board or more in distinct black letters on a white-ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

The tolls here, and in section 95, *infra*, referred to are those for the use of the line by persons with their own carriages. See note to section 86, *ante*, p. 124, and *Pryce v. Monmouthshire Railway Company*, L. R. 4 App. Cas. 197, 204.

Milestones.

94. The company shall cause the length of the railway to be measured, and milestones, posts, or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance

of one quarter of a mile from each other, with numbers or marks inscribed thereon denoting such distances. **Sect. 94.**

95. No tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited, or at which the milestones hereinbefore directed to be set up and maintained shall not be so set up and maintained; and if any person wilfully pull down, deface, or destroy any such board or milestone, he shall forfeit a sum not exceeding five pounds for every such offence.

Tolls to be taken only whilst board exhibited and milestones set up.

See note to section 93, *supra*.

96. The tolls shall be paid to such persons, and at such places upon or near to the railway, and in such manner and under such regulations, as the company shall, by notice to be annexed to the lists of tolls, appoint.

Tolls to be paid as directed by the company.

97. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or, if the same shall have been removed from the premises of the company, to detain and sell any other carriages or goods, within such premises belonging to the party liable to pay such tolls, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the moneys arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto, or it shall be lawful for the company to recover any such tolls by action at law.

In default of payment of tolls, goods, &c. may be detained and sold.

98. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls.

Account of lading, &c. to be given.

99. If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading, to such collector or other officer or servant of the company demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundredweight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding

Penalty for not giving account of lading.

Sect. 99. one hundredweight, (as the case may be) which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

Disputes as to amount of tolls chargeable.

100. If any dispute arise concerning the amount of the tolls due to the company, or concerning the charges occasioned by any detention or sale thereof, under the provisions herein or in the special Act contained, the same shall be settled by a justice; and it shall be lawful for the company in the meanwhile to detain the goods, or (if the case so require) the proceeds of the sale thereof.

Differences as to weights, &c.

101. If any difference arise between any toll collector or other officer or servant of the company and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if upon such measuring or examination such goods appear to be of greater weight or quantity or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay, the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than and of the same nature as shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner of or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention.

Toll collector to be liable for wrongful detention of goods.

102. If at any time it be made to appear to any justice, upon the complaint of the company, that any such detention, measuring, or examining of any carriage or goods, as hereinbefore mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector, and such justice shall issue his warrant accordingly.

Penalty on passengers practising frauds on the company.

103. . . . If any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

The section stands now as printed above, the portion repealed by the Statute Law Revision Act, 1892, is omitted. The Regulation of Railways Act, 1889, s. 5, *post*, contains provisions for enforcing production of tickets by passengers, and for punishing fraudulent travelling without payment: an Act, however, which will not apply to light railways unless incorporated by the order. See *ante*, p. 4, and section 12, *ante*, p. 70.

Detention of offenders.

104. If any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on

behalf of the company or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law. **Sect. 104.**

105. No person shall be entitled to carry or to require the company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence; and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact. Penalty for bringing dangerous goods on the railway.

106. If any collector of tolls or other officer employed by the company be discharged or suspended from his office, or die, abscond, or absent himself, and if such collector or other officer, or the wife, widow, or any of the family or representatives of any such collector or other officer, refuse or neglect, after seven days' notice in writing, for that purpose, to deliver up to the company or to any person appointed by them for that purpose, any station, dwelling house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to any justice, it shall be lawful for such justice to order any constable, with proper assistance, to enter upon such station or other building, and to remove any person found therein and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company, or any person appointed by them for that purpose. Delivery of matters in possession or custody of toll collector at removal.

107. And be it enacted, that the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special Act for the year ending on the thirty-first day of December or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the directors, or some of them, and by the auditors, and shall, if required, transmit a copy of the said account, free of charge, to the overseers of the poor of the several parishes through which the railway shall pass, and also to the clerks of the peace of the counties through which the railway shall pass, on or before the thirty-first day of January then next; which last-mentioned account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: Provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such clerk of the peace or overseers of the Annual account to be made up, and a copy transmitted to the clerk of the peace, &c.

Sect. 107. poor, they shall forfeit for every such omission the sum of twenty pounds.

And with respect to the regulating of the use of the railway, be it enacted as follows :

Company to regulate the use of the railway.

108. It shall be lawful for the company, from time to time, subject to the provisions and restrictions in this and the special Act contained, to make regulations for the following purposes ; (that is to say,)

For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled ;

For regulating the times of the arrival and departure of any such carriages ;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry :

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages ;

For preventing the smoking of tobacco, and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company ;

And generally for regulating the travelling upon or using and working of the railway :

But no such regulation shall authorize the closing of the railway, or prevent the passage of engines or carriages on the railway, at reasonable times, except at any time when in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway or any part thereof.

The first three heads under which regulations may be made apply to the user of the line by customers with their own carriages ; the last three heads are not thus restricted. See *Dyson v. London and North-Western Railway Company*, 7 Q. B. D. 32. Under the next section power is given to frame bye-laws for the enforcing of such regulations.

Power to make regulations by bye-laws. 3 & 4 Vict. c. 37.

109. For better enforcing the observance of all or any of such regulations, it shall be lawful for the company, subject to the provisions of an Act passed in the fourth year of the reign of Her present Majesty, intituled an Act for regulating railways, to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act ; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company ; and any person offending against any such bye-law shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye-laws as a penalty for any such offence ; and if the infraction or non-observance of any such bye-law or other such regulation as aforesaid be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

A bye-law to be valid must be reasonable, and must not be repugnant to the general law. See *Dyson v. London and North-Western Railway*

Company, 7 Q. B. D. 32; *Johnson v. Mayor of Croydon*, 16 Q. B. D. 708; *Huffam v. North Staffordshire Railway Company* [1894], 2 Q. B. 821; *Hanks v. Bridgman* [1896], 1 Q. B. 253; *Lowe v. Volp*, *ib.* 256; *Strickland v. Hayes*, *ib.* 290. Sect. 109.

110. The substance of such last-mentioned bye-laws, when confirmed or allowed according to the provisions of any Act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company according to the nature or subject matter of such bye-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed as often as the bye-laws thereon or any part thereof shall be obliterated or destroyed; and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid. Publication of such bye-laws.

111. Such bye-laws, when so confirmed, published, and affixed, shall be binding upon and be observed by all parties, and shall be sufficient to justify all persons acting under the same; and for proof of the publication of any such bye-laws it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye-laws, was affixed and continued in manner by this Act directed, and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be. Such bye-laws to be binding on all parties.

And with respect to leasing the railway, be it enacted as follows:

112. Where the company shall be authorised by the special Act to lease the railway or any part thereof to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the railway, or the portion thereof comprised in such lease, in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and such other provisions, conditions, covenants, and agreements as are usually inserted in leases of a like nature. Exercise of power to lease the railway.

As to working agreements and leasing generally, see Chap. VIII., *ante*, p. 56.

113. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of railway comprised therein, and during the continuance of any such lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the company, or the directors thereof, or their officers, agents, or servants, by virtue of this or the special Act, with regard to the possession, enjoyment, and management of the railway, or of the part thereof comprised in such lease, and the tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special Act imposed on the company, and their directors, officers, and servants; and such lessee shall, with respect to the railway comprised in such lease, be subject to all the obligations by this or the special Act imposed on the company. Powers vested in the company may be exercised by the lessees.

Sect. 114. And with respect to the engines and carriages to be brought on the railway, be it enacted as follows :

Engines to consume their smoke.

114. Every locomotive steam engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke ; and if any engine be not so constructed the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway.

Engines to be approved by the company, and certificate of approval given.

115. No locomotive or other engine, or other description of moving power, shall at any time be brought upon or used on the railway unless the same have first been approved of by the company ; and within fourteen days after notice given to the company by any party desirous of bringing any such engine on the railway the company shall cause their engineer or other agent to examine such engine at any place within three miles distance from the railway to be appointed by the owner thereof, and to report thereon to the company : and within seven days after such report, if such engine be proper to be used on the railway, the company shall give a certificate to the party requiring the same of their approval of such engine ; and if at any time the engineer or other agent of the company report that any engine used upon the railway is out of repair, or unfit to be used upon the railway, the company may require the same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company, and upon the engine being so repaired the company shall give a certificate to the party requiring the same of their approval of such engine ; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof for the purpose of being used on the railway, such difference shall be settled by arbitration.

Unfit engines to be removed.

Penalty for using improper engines.

116. If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall in any of the cases aforesaid forfeit to the company a sum not exceeding twenty pounds ; and in any such case it shall be lawful for the company to remove such engine from the railway.

Carriages to be constructed according to company's regulations.

117. No carriage shall pass along or be upon the railway (except in directly crossing the same, as herein or by the special Act authorised), unless such carriage be at all times, so long as it shall be used or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require ; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

118. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway ; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

Sect. 118.

Regulations to apply also to company's carriages.

119. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway (except as aforesaid), the owner thereof or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

Penalty for using improper carriages.

120. The respective owners of carriages using the railway shall cause to be entered with the secretary or other officer of the company appointed for that purpose the names and places of abode of the owners of such carriages respectively, and the numbers, weights, and gauges of their respective carriages ; and such owners shall also, if so required by the company, cause the same particulars to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view ; and every such owner shall, whenever required by the company, permit his carriage to be weighed, measured, or gauged at the expense of the company.

Owner's name, &c., to be registered, and exhibited on carriages.

121. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriage to be brought upon the railway, or to remove the same therefrom until such compliance.

On non-compliance carriage may be removed.

122. If the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner proper for preventing such collision or obstruction, and to detain such carriage or goods, or any part thereof, until the expenses occasioned by such unloading, removal, or detention be paid.

Carriages improperly loaded, or suffered to obstruct the road, may be unloaded or removed.

123. The company shall not be liable for any damage or loss occasioned by any such unloading, removal, or detention as aforesaid, except for damage wilfully or negligently done to any carriage or goods so unloaded, removed, or detained ; nor shall they be liable for the safe custody of any such carriage or goods so detained, unless the same be wrongfully detained by them, and then only for so long a time as the same shall have been so wrongfully detained.

Company not to be liable for damage by such unloading, &c.

124. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any trespass or

Owners liable for

Sect. 124. damage done by their engines or carriages, or by any of the servants or persons employed by them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person; and every such servant or other person may lawfully be convicted of such trespass or damage before any two justices of the peace, either by the confession of the party offending, or upon the oath of some credible witness; and upon such conviction every such owner shall pay to the company, or to the person injured, as the case may be, the damage to be ascertained by such justices, so that the same do not exceed fifty pounds.

125. It shall be lawful for any owner of an engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person by the same means as the company are enabled to recover the amount of such damage from the owner of any engine or carriage.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

126. When any dispute authorised or directed by this or the special Act, or any Act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

These sections do not apply in general to the settlement of disputes in regard to compensation for the taking or injurious affection of land under a Light Railways Order, such compensation is to be determined pursuant to section 13 of the Light Railways Act and the Arbitration Act, 1889. In cases of disputes between railway companies, the Railway Companies Arbitration Act, 1859, will be applicable, and also the Board of Trade Arbitration Act, 1874. In other cases of dispute the procedure would be under these sections if they are incorporated in the Order.

127. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

Sect. 127.

Vacancy of arbitrator to be supplied.

128. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

129. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators.

130. If where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator, the matter to begin *de novo*.

131. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act, the other to proceed *ex parte*.

132. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

133. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power for arbitrators to call for books, &c.

Sect. 134. 134. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration; that is to say,—

Arbitrator
and umpire
to make
declaration.

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the Act [*naming the special Act.*]

A. B.

“Made and subscribed in the presence of

”

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Costs to
be in the
discretion
of the
arbitrators.

135. Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators.

Submission
to arbitra-
tion may be
made a rule
of court.

136. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

By section 1 of the Arbitration Act, 1889, *post*, a submission has now the same effect as if it had been made an order of court.

The award
not to be
set aside
for matter
of form.

137. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

As to correcting clerical errors, or errors arising from accidental slip or omission, see section 7 of the Arbitration Act, 1889, and as to remitting awards, see section 10. Section 37 of the Lands Clauses Act, 1845, is identical with the above section.

Service of
notices upon
company.

138. And be it enacted, that any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given by any one director of the company.

Section 135 of the Companies Clauses Consolidation Act, 1845, is identical with this section. Compare also section 134 of the Lands Clauses Act, 1845. The principal office of a railway company is that office where the general superintendence and management of the railway is carried on. *Garton v. Great Western Railway Company*, 27 L. J. Q. B. 375; *Palmer v. Caledonian Railway Company* [1892], 1 Q. B. 823.

Tender of
amends.

139. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been

made it shall be lawful for the defendant, by leave of the court **Sect. 139.** where such action shall be pending, at any time before issue joined to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Further protection is extended to persons doing acts in pursuance or execution of, or intended execution of, Acts of Parliament by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), *post*.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows :

140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount in case of dispute, shall be ascertained and determined by two justices ; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid ; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

Provision for damages not otherwise provided for.

141. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company ; and the justices aforesaid or either of them, on application, shall issue their or his warrant accordingly ; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence ; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all cost and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Distress against the treasurer.

142. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices as the case may require, at a time and place to be named in such summons ; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses on oath ; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages, &c.

Sect. 143. 143. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such board to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication. 144. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices. 145. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices

The latter part of this section, dealing with procedure to recover penalties, is repealed by the Summary Jurisdiction Act, 1884, and the Statute Law Revision Act, 1892.

Sections 146 and 147 which relate to distress for penalties and imprisonment in default of distress, are likewise repealed by the same Acts. The procedure is now regulated by the Summary Jurisdiction Acts.

Distress how to be levied. 148. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form. 149. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties. 150. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise pro-

vided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish **Sect. 150.**

Section 151, relating to penalties being sued for within six months, is repealed by the Summary Jurisdiction Act, 1884, and the Statute Law Revision Act, 1892. The same six months' limit is, however, provided by the Summary Jurisdiction Act (11 & 12 Vict. c. 43, s. 11).

152. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. Damage to be made good in addition to penalty.

Section 153, enabling justices to summon witnesses, is repealed by the Summary Jurisdiction Act, 1884, "so far as relates to any matter to which the Summary Jurisdiction Act apply."

154. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient dispatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender. Transient offenders.

Section 155, relating to form of conviction, is superseded by the Summary Jurisdiction Acts and is repealed.

156. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts. Proceedings not to be quashed for want of form, &c.

157. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions Parties allowed to appeal to quarter sessions on giving security.

The latter part of this section, dealing with time for appealing, is repealed (Summary Jurisdiction Act, 1884).

158. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the Court to make such order as they think reasonable.

Sect. 158. appellant or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver
of metro-
politan
police dis-
trict to
receive
penalties
incurred
within his
district.

2 & 3 Vict.
c. 71.

159. Provided always, . . . notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled An Act for regulating the Police Courts in the Metropolis; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Persons
giving false
evidence
liable to
penalties of
perjury.

160. . . . Every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury

Section 161, relating to money paid into the Bank of Ireland, is repealed.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows :

Copies of
special Act
to be kept
and de-
posited, and
allowed to
be inspected.

162. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act, so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty

for default, as is provided in the case of certain plans and sections **Sect. 162.**
by an Act passed in the first year of the reign of Her present Majesty, intituled An Act to compel Clerks of the Peace for Counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament. 7 Will. 4 and 1 Vict. c. 83.

The Act mentioned is the Parliamentary Documents Deposit Act, 1837.
See note to Standing Orders, *post*, Appendix.

163. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. Penalty on company failing to keep or deposit such copies.

164. This Act shall not extend to Scotland.

Scotland.

THE RAILWAYS CLAUSES ACT, 1863.

(26 & 27 VICT. CAP. 92.)

An Act for consolidating in one Act certain Provisions frequently inserted in Acts relating to Railways.

1. This Act may be cited as the Railways Clauses Act, 1863.

Short title.

2. This Act shall be deemed to be divided into Five Parts, as follows:—

Division of Act into parts.

Part I., relating to construction of a railway;

Part II., relating to extension of time;

Part III., relating to working agreements;

Part IV., relating to steam vessels;

Part V., relating to amalgamation.

PART I.

CONSTRUCTION OF A RAILWAY.

3. This Part of this Act shall apply to the railway authorised to be constructed by any special Act hereafter passed and incorporating this Part of this Act. Application of Part I., and interpretation of terms.

In this Part of this Act—

All terms used have the same meanings as the same terms have when used in the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, respectively:

The term “tidal river” means any part of a river within the flow and ebb of the tide at ordinary spring tides:

The term “tidal water” means any part of the sea or any part of a river within the flow and ebb of the tide at ordinary spring tides:

Sect. 3.

The term "tidal lands" means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides.

The provisions respecting the recovery of penalties contained in the said Railways Clauses Consolidation Acts respectively, as the case may require, shall be incorporated with this Part of this Act.

As to what is the "special Act," see *ante*, p. 98.

Alteration of Engineering Works.

Power
to alter
engineering
works.

4. Notwithstanding anything in the said Railways Clauses Consolidation Acts respectively contained, the company, in the construction of the railway, may deviate from the line or level of any arch, tunnel, or viaduct described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in sections eleven, twelve, and fifteen of those Acts respectively, and so as the nature of the work described be not altered; and may also substitute any engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon; provided that every such substitution be authorised by a certificate of the Board of Trade; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith, and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby.

Provided, that nothing in the present section shall affect any power given to the company or to the Board of Trade by sections eleven, twelve, fourteen, or fifteen of the last-mentioned Acts respectively.

See *ante*, p. 102.

Level Crossings.

Trains not
to be
shunted
over level
crossings.

5. Where the company is authorised by the special Act to carry the railway across a turnpike road or public carriage-road on a level, it shall not be lawful for the company in shunting trains to pass any train over the level crossing, or at any time to allow any train, engine, carriage, or truck to stand across the same.

Company to
erect lodge
at point
of crossing.

6. For the greater convenience and security of the public, the company shall erect and permanently maintain a lodge at the point where the railway crosses on the level the turnpike road or public carriage road; and the company shall be subject to and shall abide by all such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade.

If the company fails to erect, or to maintain, such lodge, or to appoint or keep a proper person to watch or superintend the level crossing, or to observe or abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, and also to a penalty of ten pounds for every day

during which the offence continues after the penalty of twenty pounds is incurred. **Sect. 6.**

This and the similar penalties recoverable under this Act will be recoverable before justices.

7. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special Act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriageroad either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Board of Trade may require bridge instead of level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do.

8. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use, all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work; and the Board of Trade before issuing the certificate shall cause at least three months' notice to be given to any person who may be entitled to claim under the last-mentioned Acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work.

Power to company to take additional land for such work.

As to determining the compensation, see section 13 of the Light Railways Act.

Junctions.

9. Where the company is authorised by the special Act to make a junction between the railway and any other railway, then and in every such case all interferences with the works of the other railway, necessary or convenient for effecting the junction, shall be made under the superintendence and to the reasonable satisfaction of the engineer for the time being of the company or person to whom the other railway belongs; and in case of any difference arising as to the mode of effecting the junction, the same shall be determined by a referee to be appointed by the Board of Trade, on the application of either party, at the cost of the company making the junction.

Communications with other railways to be made under the direction of the engineer of those railways.

See also Light Railways Act, s. 23.

10. With respect to any lands belonging to the company or person to whom the other railway belongs, which the company are by the special Act authorised to use, enter upon, or interfere with, for the purposes of the junction, the company shall not, except by agreement, or unless otherwise provided in the special Act, purchase

Company to acquire only easements in land of other railway company.

Sect. 10. and take the same, but the company may purchase and take, and such other railway company or person may and shall sell and grant accordingly, an easement or right of using the same for the purposes of the junction.

Not to take
lands or
interfere
with works
of other
company
further than
necessary.

11. Nothing relative to the junction in this Act contained shall be deemed to authorise the company for the purposes of the junction to take or enter upon any lands belonging to the company or person to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making the junction and inter-communication between the railways, as shown on the deposited plans and sections of the railway to which the special Act relates, without the previous consent in writing in every instance of such other railway company or such person.

As to
expense of
signals,
watchmen,
&c.

12. The company or person with whose railway the junction is made may from time to time erect such signals and conveniences incident to the junction, either on their or his own lands or on the lands of the company making the junction, and may from time to time appoint and remove such watchmen, switchmen, or other persons as may be necessary for the prevention of danger to, or interference with, the traffic at and near the junction. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the company or person with whose railway the junction is made; and all the expenses of erecting and maintaining those signals and conveniences, and of employing those watchmen, switchmen, and other persons, and all incidental current expenses, shall, at the end of every half year, be repaid by the company making the junction, and in default thereof may be recovered from them in any court of competent jurisdiction.

Protection of Navigation.

Lights on
works.

13. Where the company is authorised by the special Act to construct, alter, or extend any work on, in, over, through or across tidal lands or a tidal water, the company shall, on or near the work, during the whole time of the constructing, altering, or extending thereof, exhibit and keep burning at their own expense, every night from sunset to sunrise, such lights (if any) as the Board of Trade from time to time requires or approves; and (notwithstanding the enactments for the time being in force respecting lighthouses) shall also on or near the work, when completed, always maintain, exhibit, and keep burning, at their own expense, every night from sunset to sunrise, such lights (if any) for the guidance of ships as the Board of Trade from time to time requires or approves.

If the company fails to comply in any respect with the provisions of the present section, they shall for each night in which they so fail be liable to a penalty not exceeding twenty pounds.

Construc-
tion of
bridges.

14. Where the company is authorised or required by the special Act to construct a bridge over a navigable tidal water, and the special Act does not make express provision respecting the span or spans thereof, then the company shall construct the same with a span or spans of such headway and waterway, and with such opening

span or spans (if any), and according to such plan, as the Board of Trade directs or approves. **Sect. 14.**

15. Where the company constructs a bridge with an opening span, it shall not be lawful for the company to detain any vessel, barge, or boat at the bridge for a longer time than may be necessary for admitting a carriage or engine traversing the railway and approaching the bridge to cross the bridge, and for opening the bridge to admit the vessel, barge, or boat to pass; and the company shall be subject to and shall abide by such regulations with regard to the user of the bridge as may from time to time be made by the Board of Trade. User of bridges.

If the company detains a vessel, barge, or boat longer than the time aforesaid, or fails in any respect to abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, without prejudice to any remedy against them for any loss or damage sustained by any person.

16. Where the railway cuts off access between the land and a tidal water or tidal lands, then and in every such case the company shall, during the construction of the railway and from time to time thereafter, make, and shall permanently maintain, and allow to be used by all persons, at all times, free of toll or other charge, all such footways and carriageways over, under, or across the railway, or on a level therewith, as the Board of Trade from time to time directs or approves: Provided always, as follows: Access to the shore under or across the railway.

- (1.) The company shall not be obliged to make a footway or carriageway over lands for the use of an owner or occupier who has agreed to receive and has been paid compensation for the severance thereof from the tidal water or tidal lands:
- (2.) The company shall not be obliged to make or to allow to be made a footway or carriageway in such manner as would interfere with the working or using of the railway:
- (3.) The expense of the making and maintenance of a footway or carriageway required to be made after the construction of the railway shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

Where the footway or carriageway is made across the railway on the level, then the manner of the making and watching of the level crossing shall be subject to the approval of the Board of Trade; and where the level crossing is made after the construction of the railway, then all expenses attending the watching thereof shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

17. Where the company is authorised by the special Act to construct a railway skirting a public navigable tidal river or channel, the company shall not make any deviation of the railway from the continuous centre line thereof marked on the plan deposited by them at the Board of Trade, even within the limits of deviation shown on that plan, in such manner as to diminish the navigable Prohibition of deviation of certain works without consent of Board of Trade.

Sect. 17. space, without the previous consent of the Board of Trade, or otherwise than in such manner as is expressly authorised by the Board of Trade.

If any deviation is made in contravention of the present section the Board of Trade may abate and remove the work in the construction whereof the deviation is made, or any part thereof, and restore the site thereof to its former condition at the expense of the company; and the amount of such expense shall be a debt due from the company to the Crown, and be recoverable accordingly with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

Abatement
of work
abandoned
or decayed.

18. If a work constructed by the company on, in, over, through, or across tidal lands or a tidal water is abandoned, or suffered to fall into decay, the Board of Trade may abate and remove the work, or any part of it, and restore the side thereof to its former condition, at the expense of the company; and the amount of such expense shall be a debt due from the company to the Crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

Survey
of works
by Board
of Trade.

19. If at any time the Board of Trade deems it expedient, for the purposes of the special Act or of this part of this Act, to order a survey and examination of a work constructed by the company on, in, over, through, or across tidal lands or tidal water, or of the intended site of any such work, the company shall defray the expense of the survey and examination; and the amount thereof shall be a debt due from the company to the Crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

PART II.

EXTENSION OF TIME.

Parties
aggrieved
by extension
of time
may have
compensa-
tion for
additional
damage.

20. Where a railway is authorised to be constructed by a special Act passed either before or after the passing of this Act, and the time limited by the special Act for the exercise of powers of compulsory purchase of lands, or of powers for construction of the railway and works, is extended by a special Act hereafter passed and incorporating this part of this Act,—then and in every such case the justices, arbitrators, umpires, or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and assess compensation for, the additional damage (if any) sustained by those owners, occupiers, or other persons, by reason of the extension of time.

This compensation will be assessed by arbitration. See Light Railways Act, s. 13.

Existing
contracts
and notices

21. The extension of time shall not affect any contract entered into or notice given by the company before the passing of the

special Act granting the extension, for purchasing, taking, or using any lands which the company was entitled to purchase, take, or use ; but every such contract and notice shall be construed and take effect, and the same proceedings may be had thereunder, and all parties thereto shall be entitled to the same rights and remedies in respect thereof, at law and in equity, as if the extension had not been granted.

Sect 21.

to take lands
not to be
affected.

PART III.

WORKING AGREEMENTS.

22. Where two or more companies are authorised by a special Act hereafter passed and incorporating this part of this Act, to agree among themselves with respect to all or any of the following purposes ; namely,—

Restrictions
on agree-
ments
between
companies

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them ;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon ;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic ;—

then and in every such case the authority so to agree, or the agreement when entered into, shall not in any manner affect any of the tolls, rates, or charges which the companies parties thereto are from time to time respectively authorised to demand and receive from any person or from any other company ; but all such persons and companies shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies, parties to the agreement, on the same terms and conditions, and on payment of the same tolls, rates, and charges, as they would be if such authority had not been given or the agreement had not been entered into.

The order authorising the railway may contain the powers as to such agreements. See Light Railways Act, s. 11. It is to be noted that the Railway Companies Powers Act, 1864 (27 & 28 Vict. c. 120), will apply to the railway, unless its provisions are expressly or by necessary implication excluded. See Light Railways Act, s. 12 (2). Under that Act, a railway company may obtain a draft certificate from the Board of Trade if no railway or canal company interested lodges a notice of opposition. This draft certificate, after being laid before Parliament, becomes, if no motion to the contrary is carried in either House, embodied in a certificate issued by the Board of Trade, authorising two or more railway companies to enter into an agreement as to the maintenance, management, working, &c., of their lines, or of any portion of the line of either. The certificate thus issued has all the effect of an Act of Parliament couched in the same terms. The terms of the agreement have afterwards to be approved by the Railway Commissioners, unless by the order authorising the light railway, these sections are excluded, or varied by giving the power of approval either to the Light Railway Commissioners, or to the Board of Trade, and excluding the Railway Commissioners. See sections 24, 25, *infra*, and section 10 of the Regulation of Railways Act, 1873.

Sect. 23. 23. The agreement shall not, save so far as its terms and conditions are authorised by the Railways Clauses Consolidation Act, 1845, or by the Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, or by any other general statute or law from time to time in force with respect to the companies parties to the agreement, have any operation unless and until it is sanctioned by such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the several companies parties thereto, present (personally or by proxy) at a general meeting of each company specially convened for the purpose (in manner hereinafter mentioned), as is prescribed in the special Act, and if no proportion is prescribed, then by three-fifths of such votes.

Sanction of
share-
holders to
agreements.

Every such meeting shall be convened by circular addressed to each such shareholder and stockholder, and served in the manner prescribed by the Companies Clauses Consolidation Act, 1845, or the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may require, with respect to notices requiring to be served by the company upon the shareholders, and also by advertisement inserted once at least in each of two consecutive weeks in some newspaper published or circulating in the county prescribed in the special Act, and if no county is prescribed, then in the county in which the head office of the company is situate, the last of such advertisements to be published not less than seven days before the meeting.

Public
notice of
intention
to enter
into such
agreement.

24. Before the companies enter into the agreement notice of their intention to do so shall be given by them or one of them, in a form to be approved by the Board of Trade, inserted once at least in each of three successive weeks in some newspaper published or circulated in the county prescribed in the special Act, and if no county is prescribed, then in the county or one of the counties in which each railway to the maintenance, management, use, or working whereof the proposed agreement relates, or some portion of that railway, is situate; and the notice shall set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade.

The objection must be brought before the Railway Commissioners instead of the Board of Trade. The powers of the Board of Trade under Part III. of this Act, or under any special Act, with respect to the approval of working agreements are transferred to the Railway Commissioners by section 10 of the Regulation of Railways Act, 1873.

Approval
of Board of
Trade.

25. The agreement shall not have any operation until it is approved by the Board of Trade; and the Board of Trade shall not approve the agreement without being satisfied of its having received such sanction of meetings of the respective companies as aforesaid.

The Railway Commissioners now have the above power.

Joint com-
mittee for
purposes of
agreements.

26. The companies parties to the agreement may, in accordance therewith and for the purposes thereof, appoint a joint committee, composed of such number of the directors of each company as the companies think proper, and from time to time may vary and renew the joint committee as occasion requires, and may regulate the proceedings of the joint committee, and may delegate to the joint

committee all such of the powers of the companies as the companies think necessary for carrying into effect the purposes of the agreement; and the joint committee shall have and may exercise the powers so from time to time delegated to them in like manner as the same powers might be had and exercised by the companies respectively or their respective directors. **Sect. 26.**

27. At the expiration of the first or any subsequent period of ten years after the making of the agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised; and the Board of Trade may require the companies parties thereto to publish such notices of any intended revision of the agreement as the Board of Trade may direct; and the Board of Trade may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare the modification to be part of the agreement, and the same shall be read and take effect accordingly. Agreements between companies may be modified by Board of Trade.

See note to section 24, *ante*.

28. Where a company is authorised by a special Act hereafter passed, and incorporating this Part of this Act, to agree with a person being the proprietor of a railway with respect to all or any of the purposes specified in this Part of this Act, then and in every such case the provisions of this Part of this Act shall apply, *mutatis mutandis*, to the company in relation to such authority and to the agreement entered into by virtue thereof. Working agreements between a company and an individual.

29. For the purposes of this Part of this Act, any alteration of an agreement by the parties thereto shall be deemed an agreement. Alteration of agreement.

PART IV.

STEAM VESSELS.

30. Where a railway company incorporated either before or after the passing of this Act is authorised by a special Act hereafter passed and incorporating this Part of this Act, to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels,—then and in every such case tolls shall be at all times charged to all persons equally, and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof; or in favour of or against any person using the railway in consequence of his having used or being about to use or his not having used or not being about to use the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway Provision for securing equality of treatment.

Sect. 30. the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

Application of Railway and Canal Traffic Act. **31.** The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels, and to the traffic carried on thereby.

Company empowered to make bye-laws for regulating steam vessels. **32.** The company may from time to time make bye-laws in relation to passengers, animals, and goods conveyed in or upon the steam vessels, and as to the embarkation and disembarkation thereof respectively, and may enforce the observance of the same by penalties, in the same manner as they may with respect to passengers, animals, and goods conveyed upon their railway; such bye-laws to be sanctioned and authenticated in the same manner as is required by any special or other Act with respect to bye-laws relating to the company's railway, and being published by being painted on boards, or printed on paper and pasted on boards, and hung up or affixed and continued on some conspicuous part of every steam vessel and landing-place of the company; and such bye-laws, and all penalties in respect of the breach thereof, shall be enforced and recovered in the same manner as is provided with respect to bye-laws relating to the company's railway, and to penalties in respect of the breach thereof.

Recovery of money by distress. **33.** All tolls and charges for the steam vessels due and payable to the company on any account whatsoever, and all costs, damages, and expenses by the special Act directed to be paid in respect of the steam vessels, may be levied by distress; and in England or Ireland any justice, and in Scotland the sheriff, may, on application by or on behalf of the company, issue his warrant accordingly.

The justice or sheriff who issues the warrant of distress may order that the costs of the proceedings for the recovery of the toll or sum shall be paid by the person liable to pay the toll or sum, and the costs shall be ascertained by the justice or sheriff, and shall be included in the warrant of distress for the recovery of the toll or sum.

Several names in one warrant. **34.** Any number of names and sums may be included in any warrant of distress or notice obtained or given by the company for any of the purposes of this part of this Act, or of the provisions of the special Act with respect to the steam vessels, and may be stated either in the body of the warrant or notice, or in a schedule thereto.

Provision for cesser of powers as to steam vessels, on report from Board of Trade. **35.** In every seventh year after the passing of the special Act, reckoned from the first day of January next after its passing the Board of Trade, if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the company relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded, and if the company does not before the beginning of the then next session of Parliament make provision to the satisfaction of the Board of Trade for protection of the interests of the public, or if the injury done to the interests of the public is, in the opinion of the Board of Trade, incapable of being remedied by the company, then the Board of Trade, at the beginning of the session of Parlia-

ment then next following, shall report to both Houses of Parliament such their opinion, and the reasons on which that opinion is founded, and at the expiration of twelve calendar months after the presentation to the Houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the meantime otherwise provides, cease to be exercised. **Sect. 35.**

The powers of the Board of Trade under this section are transferred to the Railway Commissioners. See section 10 of the Regulation of Railways Act, 1873.

PART V.

AMALGAMATION.

36. This part of this Act shall apply where two or more railway companies, respectively incorporated either before or after the passing of this Act, are amalgamated by a special Act hereafter passed and incorporating this part of this Act. Application of Part V.

37. For the purposes of this part of this Act, companies shall be deemed amalgamated by a special Act, in either of the following cases : Definition of cases of amalgamation.

- (1.) Where by the special Act two or more companies are dissolved, and the members thereof respectively are united into and incorporated as a new company :
- (2.) Where by the special Act a company or companies is or are dissolved, and the undertaking or undertakings of the dissolved company or companies is or are transferred to another existing company, with or without a change in the name of that company :

And in this part of this Act, such special Act is referred to as the amalgamating Act ; the company incorporated or continued by or under the amalgamating Act is referred to as the amalgamated company ; and the time prescribed in the amalgamating Act for the amalgamation taking effect, and if no time is prescribed, then the time of the passing of the amalgamating Act, is referred to as the time of amalgamation.

38. In every case of amalgamation, the undertaking, railways, harbours, navigations, ferries, wharfs, canals, works, real and personal property, powers, authorities, privileges, exemptions, rights of action and suit, and all other the rights and interests of the dissolved company, shall, subject to the contracts, obligations, debts, and liabilities of that company, become at the time of amalgamation, and by virtue of the amalgamating Act, vested in the amalgamated company, and may and shall be held, used, exercised, and enjoyed by the amalgamated company in the same manner and to the same extent as the same respectively at the time of amalgamation are, or if the amalgamating Act were not passed might be, held, used, exercised, and enjoyed by the dissolved company. Undertakings of dissolved companies vested in amalgamated company.

39. The special Acts relating to or affecting the dissolved company or their undertaking in force at the passing of the amalgamating Act, shall, except so far as they are thereby expressed to Acts relating to dissolved companies

Sect. 39. be varied or repealed, remain in full force; and all rights and powers thereby conferred on and vested in the dissolved company in relation to their undertaking may be enjoyed and exercised by the amalgamated company in relation to the dissolved undertaking; and all matters to be done, continued, or completed, or which but for the amalgamation would, might, or could be done, continued, or completed, by the dissolved company, or their directors, officers, or servants, under or by virtue of those Acts, shall or may be done, continued, or completed by the amalgamated company, and their directors, officers, and servants, as the case may be; and every special Act, so far as it relates to or affects the dissolved company or their undertaking, shall be read and construed as if the name of the amalgamated company had been used therein in relation to that undertaking instead of the name of the dissolved company.

Saving debts
and claims
of dissolved
companies.

40. Except as may be otherwise provided in the special Act, all debts and money due from or to the dissolved company, or any persons on their behalf, shall be payable and paid by or to the amalgamated company; and all tolls, rates, duties, and money due or payable by virtue of any Act relating to the dissolved company from or to that company shall be due and payable from or to the amalgamated company, and shall be recoverable from or by the amalgamated company by the same ways and means, and subject to the same conditions, as the same would or might have been recoverable from or by the dissolved company if the amalgamating Act had not been passed.

Saving con-
veyances,
contracts,
&c.,

41. All deeds, conveyances, grants, assignments, leases, purchases, sales, mortgages, bonds, covenants, agreements, contracts, and securities which before the amalgamation have been executed, made, or entered into by, with, to or in relation to the dissolved company, or the directors thereof, and which are in force at the time of amalgamation, and all obligations and liabilities which before the amalgamation have been incurred by or to, or which but for the amalgamation might or would have arisen in relation to, the dissolved company or the directors thereof, shall be as valid and of as full force and effect in favour of, against, or in relation to the amalgamated company as if the same had been executed, made, or entered into by, with, or to, or in relation to, or had been incurred by or to, or had arisen in relation to, the amalgamated company by name.

Causes
and rights
of action
reserved.

42. All causes and rights of action or suit accrued before the time of amalgamation, and then in any manner enforceable by, for, or against the dissolved company, shall be and remain as good, valid, and effectual for or against the amalgamated company as they would or might have been for or against the dissolved company affected thereby, if the amalgamating Act had not been passed.

Actions not
to abate.

43. Nothing in the amalgamating Act or in this Part of this Act shall cause the abatement, discontinuance, or determination of or in anywise prejudicially affect any action, suit, or other proceeding at law or in equity commenced by or against the dissolved company, either solely or jointly with any other company or with any person, before the time of amalgamation, and then pending; but the same

may be continued, prosecuted, or enforced by or against the amalgamated company, either solely or, as the case may require, jointly with such other company or with such person; and all person committing offences against any of the provisions of any special Act relating to the dissolved company before the amalgamation may be prosecuted, and all penalties incurred by reason of such offences may be sued for and recovered, in like manner in all respects as if the amalgamating Act had not been passed,—the amalgamated company being in respect of all such matters considered as identical with the dissolved company.

Sect. 43.

44. No submission to arbitration of any matter in dispute between the dissolved company and any other company or any person, under which any reference is pending and incomplete at the time of amalgamation, and no award theretofore made and then remaining in force, shall be revoked or prejudicially affected by anything in the amalgamating Act or in this Part of this Act contained; but every such submission and award shall be as valid and effectual for or against the amalgamated company as it would have been for or against the dissolved company.

Saving submissions and awards relating to dissolved companies.

45. All works which the dissolved company is at the time of amalgamation authorised or bound to execute and complete, and which are not then executed or completed, may or shall (as the case may require) be executed or completed by the amalgamated company, and for that purpose the amalgamated company shall have and be subject to all the powers, rights, and conditions which were conferred or imposed upon the dissolved company, and which but for the passing of the amalgamating Act might have been exercised by or enforced against the dissolved company.

Unexecuted works of dissolved companies may be completed.

46. Where the dissolved company has under any special Act entered into any contract for the purchase of or taken or used any lands, which at the time of amalgamation have not been effectually conveyed to the dissolved company, or the purchase money in respect of which has not been duly paid by the dissolved company, —then and in every such case the contract, if in force at the time of amalgamation, shall thereafter be completed by, and such lands shall be conveyed to, the amalgamated company, or as the amalgamated company directs, and the purchase money shall be paid and applied pursuant to the special Acts relating to the dissolved company; and those Acts shall, in relation to the completion of the contract and the purchase and conveyance of the lands, and the payment and application of the purchase money in respect thereof, be read and construed as if the amalgamated company were the company named in the acts and contracts.

Contracts for land entered into by dissolved companies to be executed.

47. Where any money has, before the time of amalgamation, been paid by the dissolved company, or is thereafter paid by the amalgamated company under any special Act relating to the dissolved company, into the Bank of England, or into one of the incorporated or chartered banks in Scotland, or into the Bank of Ireland, or to any trustee or trustees, on account of the purchase of any lands, or any interest therein, or for any compensation or satisfaction, or on any other account, such money, or the stocks, funds, or securities

Application of money paid into bank or to trustees.

Sect. 47. in or upon which the same then is or thereafter may be invested by order of any court, or otherwise, and the interests, dividends, and annual produce thereof, shall be applied and disposed of pursuant to such special Act; and that and every other Act shall, in relation to such money, stocks, funds, or securities, or the interest, dividends, or annual produce thereof, be read and construed as if the amalgamated company were the company therein named with reference to the same money, stocks, funds, securities, interest, dividends, or annual produce.

Officers of dissolved companies to be accountable for books, &c.

48. All officers and persons who, at the time of amalgamation, have in their possession or under their control any books, documents, papers, or effects belonging to the dissolved company, or to which the dissolved company would but for such dissolution have been entitled, shall be liable to account for and deliver up the same to the amalgamated company, or to such persons as the amalgamated company may appoint to receive the same, in the same manner, and subject to the same consequences on refusal or neglect, as if such officers and persons had been appointed by and become possessed of such books, documents, papers, or effects for the amalgamated company.

Officers of dissolved companies to be officers of amalgamated company.

49. All clerks, officers, and servants who at the time of amalgamation are in the employment of the dissolved company shall thereupon become clerks, officers, or servants, as the case may be, of the amalgamated company, with the same rights, and subject to the same obligations and incidents in respect of such employment as they would have had or been subject to as the clerks, officers, or servants of the dissolved company, and shall so continue unless and until they respectively are duly removed from such employment by the amalgamated company, or until the terms of their employment are duly altered by the amalgamated company.

Books, &c., to be evidence.

50. All books and documents which would have been evidence in respect of any matter for or against the dissolved company shall be admitted as evidence in respect of the same or the like matter for or against the amalgamated company.

Resolutions of dissolved companies to remain in force.

51. All resolutions of any general meeting or board of directors of the dissolved company, or of any duly constituted and authorised committee thereof, so far as the same are applicable and remain in force, shall, notwithstanding the dissolution, continue to be operative, and shall apply to the amalgamated company, and to the directors, officers, and servants of the amalgamated company, until duly revoked or altered by the amalgamated company or under their authority.

Payment of calls.

52. All calls made by the dissolved company, and not paid at the time of amalgamation, shall be payable to and may be enforced by the amalgamated company, as if such calls had been made by the amalgamated company.

Registers, books, and certificates relating to dissolved

53. All registers of shares, stock, mortgages, and bonds of the dissolved company, and all registers of transfers thereof respectively, and all shareholders and stockholders address books, and all certificates of shares or stock of and in the dissolved company, which

are valid and subsisting at the time of amalgamation, shall continue to be valid and subsisting, and shall have the same operation and effect as before the dissolution, unless and until new or altered registers, books, and certificates respectively are substituted in their stead; and all transfers, sales, or dispositions of stock or shares made before the dissolution and not then completed shall have the same operation and effect as if made after the dissolution.

Sect. 53.

companies
to subsist
until re-
placed.

54. All the bye-laws, rules, and regulations of the dissolved company relating to the management, use, or control of their undertaking shall, notwithstanding the dissolution, continue to be in force and applicable to and in respect of the undertaking, and shall and may be enforced by and available to the amalgamated company in their own name, as well for the recovery of penalties as for all other purposes, as if the same respectively had been originally made by the amalgamated company, until the expiration of twelve months after the time of amalgamation, or until other bye-laws, rules, and regulations are duly made by the amalgamated company in their stead, whichever first happens.

Bye-laws
to remain
in force.

55. Notwithstanding the dissolution of the dissolved company, and the amalgamation, everything before the time of amalgamation done, suffered, and confirmed respectively, under or by virtue of any special Act relating to the dissolved company, shall be as valid as if the amalgamating Act had not been passed; and the dissolution and amalgamation, and the amalgamating Act, and this Part of this Act, respectively, shall accordingly be subject and without prejudice to everything so done, suffered, and confirmed respectively, and to all rights, liabilities, claims, and demands, present or future, which if the dissolution and amalgamation had not taken place, and the amalgamating Act had not been passed, would be incident to or consequent on anything so done, suffered, and confirmed respectively; and with respect to all things so done, suffered, and confirmed respectively, and to all such rights, liabilities, claims, and demands, the amalgamated company shall to all intents represent the dissolved company; and the generality of this present provision shall not be deemed to be restricted by any other of the provisions of this Part of this Act, or by any provision of the amalgamating Act that does not expressly refer to this present provision, and expressly restrict the operation thereof.

General
saving of
rights and
claims.

THE LANDS CLAUSES CONSOLIDATION ACT 1845.

(8 VICT. CAP. 18.)

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of Lands for undertakings of a Public Nature.

Sect. 1.

Act to apply to all undertakings authorized by Acts hereafter to be passed.

. . . . This Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.

The omissions in this Act if not otherwise stated are of words repealed by the Statute Law Revision Acts.

As to the incorporation of this Act in orders for light railways, see the Light Railways Act, 1896, ss. 11, 12 (1), *ante*, pp. 68—70, and the note to the similar section of the Railways Clauses Act, 1845, *ante*, p. 97, and the note to section 16 of this Act, *post*, p. 161.

Interpretations in this Act:

“Special Act:”

“prescribed:”

“the works:”

“promoters of the undertaking.”

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

2. The expression “the special Act,” used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word “prescribed,” used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word “prescribed,” the expression “prescribed for that purpose in the special Act” had been used; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall be by the special Act be authorised to be executed; and the expression “the promoters of the undertaking,” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

The expression, “the special Act,” is defined in section 12 (2) of the Light Railways Act as the order authorising the light railway, but, where the context requires it, the Order and the Light Railways Act itself may be the special Act.

The promoters of the undertaking will similarly be the persons authorised by the Order to construct the light railway.

3.

The definitions of the terms in this section are identical with those in section 3 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 98, and are, therefore, not repeated.

4. . . . In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845." **Sect. 4.**
 "Short title of the Act."

5. . . . And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Form in which portions of this Act may be incorporated with other Acts.

The headings of the Act, with the sections under them, are as follows:—

"With respect to the construction of this Act and of Acts to be incorporated therewith." Sections 2—5.

"With respect to the purchase of lands by agreement." Sections 6—15.

"With respect to the purchase and taking of lands otherwise than by agreement." Sections 16—68.

"With respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title." Sections 69—80.

"With respect to the conveyances of land." Sections 81—83.

"With respect to the entry upon lands by the promoters of the undertaking." Sections 84—91.

"With respect to small portions of intersected land." Sections 93 and 94.

"With respect to copyhold lands." Sections 95—98.

"With respect to copyhold lands, being common or waste lands." Sections 99—107.

"With respect to lands subject to mortgage." Sections 108—114.

"With respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for." Sections 115—118.

"With respect to lands subject to leases." Sections 119—122.

"With respect to interests in land which have by mistake been omitted to be purchased." Sections 124—126.

"With respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof." Sections 127—132.

"With respect to the recovery of forfeitures, penalties, and costs." Sections 136—149.

"With respect to the provision to be made for affording access to the special Act by all parties." Sections 150 and 151.

And with respect to the purchase of lands by agreement, be it enacted as follows:

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all

Power to purchase lands by agreement.

Sect. 6. parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

It would appear that under this section owners may sell easements or rights to use land or strata of land. See *Great Western Railway Company v. Swindon and Cheltenham Railway Company*, 9 App. Cas. 787, 801.

Parties
under dis-
ability
enabled to
sell and
convey.

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestuique* trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons, and that to the same extent as such *cestuique* trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

As to the price, see section 9 of this Act and section 19 of the Light Railways Act, *ante*, p. 75. The money is payable into court if it amounts to or exceeds 200*l.* (section 69); if between 20*l.* and 200*l.*, into court or to trustees (sections 71, 73); and if under 20*l.*, to the parties entitled to the rents and profits (section 72). The order under the Light Railways Act may, if thought advisable, modify the above by allowing sums under 500*l.* to be paid to trustees (section 14), *ante*, p. 72.

As to the application and investment of such money, see sections 69 and 70.

As to costs of conveyance, see sections 81 and 82.

Parties
under dis-
ability to

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any

Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking. **Sect. 8.** exercise other powers.

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned. Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the bank.

This section must be read subject to section 19 of the Light Railways Act. If the sanction of the Board of Agriculture is obtained under that section, this section will not operate. Trustees cannot nominate as a valuer one of their number who may happen to be a surveyor. *Peters v. Lewes and East Grinstead Railway Company*, 18 Ch. D. 429, pp. 438, 440.

Although section 13 of the Light Railways Act requires that all matters to be settled by justices under this Act shall be settled by an arbitrator, the appointment of a surveyor under this section will still probably be by justices.

10. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum. Where vendor absolutely entitled, lands may be sold on chief rents.

The power given by this section has been extended to persons under disability by the Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), as follows:—

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act. Sections 10 and 11 of recited Act, as to power to sell, &c., lands for an annual rentcharge, and to recover, extended to

all sales, &c., where parties are under disability.

Similar proviso with regard to lands sold under section 10 of 8 & 9 Vict. c. 19.

Amount of rentcharge to be settled in manner directed in the 9th section of recited Acts.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall, in all such cases, be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

Sect. 11.

Payment of rents to be charged on tolls.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Power to purchase lands required for

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore

contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes. **Sect. 12.**

—
additional
accommo-
dation.

As to what are extraordinary purposes, see section 45 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 112.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Authority
to sell and
re-purchase
such lands.

14. The promoters of the undertaking shall not, by virtue of the power to purchase lands for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the lands so sold or disposed of by them.

Restraint
on purchase
from in-
capacitated
persons.

15. Nothing in this Act or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Treasury any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Municipal
corporations
not to sell
without the
approbation
of the
Treasury.

See also section 108 of the Municipal Corporations Act, 1882.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

16. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators for the payment of the several sums by them respectively subscribed before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Capital
to be sub-
scribed
before com-
pulsory
powers of
purchase
put in force.

This heading comprises sections 16—18 inclusive, and section 11 (a) of the Light Railways Act provides that in incorporating the Lands Clauses Acts that no variation shall be made in the provisions "with respect to the purchase and taking of land otherwise than by agreement." This provision must, however, be read subject to section 13 of the Light Railways Act, which provides for the settlement of compensation by a single arbitrator in all cases. The Arbitration Act, 1889, is to apply to such arbitration. There

Sect. 16. will be some difficulty in construing the two Acts together, but where they are inconsistent the Arbitration Act would appear to be the one to be followed.

The expression "capital to be subscribed by the promoters" probably may be construed to mean the "share capital" as defined in section 28 of the Light Railways Act.

Land may be purchased by agreement, and notices to treat may be served before the capital is subscribed. *Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553.

A certificate of two justices to be evidence that the capital has been subscribed.

17. A certificate under the hands of two justices certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

It would seem that notwithstanding section 13 of the Light Railways Act two justices will remain the proper parties to give the certificate and not the arbitrator. The order cannot contain any provision making it plain whether it is intended that two justices should thus act, or whether it is intended to intrust this duty to the arbitrator.

Notice of intention to take lands.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice to treat need not be delivered when it is merely intended to destroy an easement; the person whose land is thereby injured should afterwards claim compensation under section 68. *Clark v. School Board of London*, 9 Ch. 120; *Wigram v. Fryer*, 36 Ch. D. 587.

For the decisions on this section see Browne and Allan on "Compensation," pp. 33—49.

Service of notices on owners and occupiers of lands.

19. All notices requiring to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

As to the procedure when the person is abroad or cannot be found, see section 58.

Service of notice

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if

no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands. **Sect. 20.** on a corporation aggregate.

21. If for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party for which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation. If parties fail to treat or in case of dispute question to be settled as after mentioned.

The methods of settling questions of disputed compensation provided by the Lands Clauses Acts are three :

1. By justices, when the amount claimed does not exceed 50*l*. (sections 22, 68), and when the person has no greater interest than as a tenant from year to year (section 121).
2. By arbitration by two arbitrators and an umpire (sections 23, 64, 68, and 130).
3. By a sheriff and jury (sections 23, 68).

Under the Light Railways Act, s. 13, these various tribunals are displaced by an arbitrator appointed by agreement between the parties or by the Board of Trade, who is to determine any matter which under the Lands Clauses Acts are determinable by either of these ways. The sections dealing with the settlement of compensation by surveyors are not displaced by the Light Railways Act (*see* sections 9, 58, 85, 106), but may be incorporated in the order, and varied as may be desired, except in the case of section 58, which, if incorporated, may not be varied, *see* section 11, *ante*, p. 68.

Although the notice to treat under section 18 demands the particulars of the owner's estate and interest, it has been held that the owner, unless he requires arbitration under section 23, is not bound to give these particulars. Probably the effect of section 13 of the Light Railways Act is to require the owner to give the particulars.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices. Disputes as to compensation where the amount claimed does not exceed 50*l*. to be settled by two justices.

See note to section 21.

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party Compensation exceeding 50*l*. to be settled by arbitration or jury, at the option of the party

Sect. 23. claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury as hereinafter provided.

claiming
compensation.

See note to section 21.

Section 24 deals with procedure before justices.

Sections 25—33 relate to the appointment of arbitrators and umpires and their powers are not applicable. Under the Light Railways Act in compensation cases there will be only one arbitrator, and he may be appointed by the Board of Trade. The Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, are therefore not applicable.

The powers of the arbitrator are regulated by the Arbitration Act, 1889, Appendix, *post*, p. 286.

See the note to the Railways Clauses Act, 1845, s. 126, *ante*, p. 134.

Costs of
arbitration
how to be
borne.

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

As this section will be incorporated in orders authorising light railways, presumably the payment of costs will be governed by it. If not, the costs will be in the discretion of the arbitrator under schedule 1 (i.) of the Arbitration Act, 1889, but that schedule only applies where there is no provision in the submission. In the application of the Act to Scotland it is distinctly provided that the costs shall be in the discretion of the arbitrator. Section 26 (3). As to the effect of this section, see *Metropolitan District Railway Company v. Sharpe*, 5 App. Cas. 425.

This section does not cover the costs of preliminary negotiations.

The offer should be made before the arbitration commences: that probably means before the matter is referred to the arbitrator as provided in section 13 of the Light Railways Act. As to the time to make the offer, see *Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776; *Yates v. Mayor of Blackburn*, 29 L. J. Ex. 447; *Gray v. North Eastern Railway Company*, 1 Q. B. D. 696. An offer by a town clerk on the instruction of a sub-committee of the council, but not sanctioned by the council, is not a valid offer. *Foster v. Mayor of Sheffield*, 72 L. T. 549.

The costs under this section, if it is applicable, may be taxed pursuant to the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), which is as follows:—

Fees for
taxing costs
in compensation
inquiries and
arbitrations.
8 & 9 Vict.
c. 18.

1. (1.) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award, as the case may be, shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

(2.) Section forty-five of the Regulation of Railways Act, 1868, and section one of the Lands Clauses Consolidation Act, 1869, are hereby repealed. **Sect. 34.**

2. This Act may be cited as the Lands Clauses (Taxation of Costs) Act, 1895. 31 & 32 Vict. c. 119.
32 & 33 Vict. c. 18.
Short title.

As to the scale of costs, see Light Railways Act, s. 13, sub-sect. (2).

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose. Award to be delivered to the promoters of the undertaking.

The effect of this section is to place the burden of taking up the award and paying the arbitrator's fee upon the light railway company. If the landowner voluntarily takes up the award and pays the arbitrator's fee it would seem that he cannot recover it from the company. *Shrewsbury (Earl of) v. Wirral Railways Committee* [1895], 2 Ch. 812.

Section 36 enabled a submission to be made a rule of court. See now Arbitration Act, 1889, s. 1, Appendix, *post*, p. 286.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form. Award not void through error in form.

See the Arbitration Act, 1889, s. 7, *post*, p. 288.

Sections 38—57 relate to the procedure to have compensation determined by a sheriff and jury.

58. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned. Compensation to absent parties to be determined by a surveyor appointed by two justices.

This section will not apparently be affected by section 13 of the Light Railways Act. See note to section 21, *ante*, p. 67.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof. Two justices to nominate a surveyor.

See note to last section.

Sect. 60. 60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination ; (that is to say,)

Declaration to be made by the surveyor.

“I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.

“Made and subscribed in the presence of

.”

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Valuation, &c., to be produced to the owner of the lands on demand.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase money and compensation, how to be estimated.

63. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

In estimating the value of the land taken, it is the value to the vendors and not to the promoters that is to be ascertained. *Stebbing v. Metropolitan Board of Works*, L. R. 6 Q. B. 37. In awarding compensation for severance, the benefit to the land conferred by the light railway is to be taken into account (section 13). The prospective use of the severed land may be taken into account in ascertaining the value. *Reg. v. Brown*, L. R. 2 Q. B. 630.

When land is taken, compensation may be claimed for injurious affection to land of the same owner, caused by the carrying on of works on the land taken. *Cowper Essex v. Acton Local Board*, 14 A. C. 153; *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418. See as to compensation, *ante*, p. 48.

Where compensation to absent party has been determined by a surveyor, the party may have the same sub-

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid, could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or invest-

ment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration. **Sect. 64.** mitted to arbitration.

The arbitration will be by an arbitrator appointed by agreement or by the Board of Trade. Light Railways Act, s. 13, *ante*, p. 71.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them. Question to be submitted to the arbitrators.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof, the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts. If further sum awarded, promoters to pay or deposit same within fourteen days.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking. Costs of the arbitration.

See note to section 34, *ante*, p. 68.

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the To be settled by arbitration or jury, at the option of the party claiming compensation.

Sect. 68. amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

The effect of this section when incorporated appears to be, that if the light railway company does not take proceedings within twenty-one days to have an arbitrator appointed by agreement or by the Board of Trade under section 13 of the Light Railways Act, or enter into an agreement in respect of the claim, the landowner will be able to recover the full amount claimed.

This section in itself gives a right to compensation for injurious affection in the absence of any other provision (*Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 227), but as to compensation for damage, see section 16 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 104.

Land may be taken before the compensation is settled pursuant to section 85 of this Act.

For the principles of compensation for injurious affection, see Chap. VII., *ante*, p. 48.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows :

Purchase money payable to parties under disability amounting to 200*l.* to be deposited in the bank.

69. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privy of the Accountant-General of the Court of Chancery . . . to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it) pursuant to the method prescribed by any special Act for the time being in force for regulating moneys paid into the said courts ; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes ; (that is to say,)

Application of moneys deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes ; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled ; or

If such money shall be paid in respect of any buildings taken

under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Express power is given in the Light Railways Act to vary this section in the order, authorising the railway by providing that sums under 500*l.* may be paid to trustees. Section 14, *ante*, p. 72.

Under this section the money is now paid in with the privy and in the name of Her Majesty's Paymaster-General, for and on behalf of the Supreme Court of Judicature. Supreme Court (Funds, &c.) Act, 1884. The procedure on payment in is governed by the Supreme Court Fund Rules, 1894.

The moneys may be applied pursuant to the Settled Land Acts, 1882—1890, as well as under this Act. See *Ex parte Vicar of Castle Bytham* [1895], 1 Ch. 348.

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery . . . made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Order for application and investment meanwhile.

The money paid into court under this section has been held to be cash under the control of the court, and can be invested, pending its application under section 69, in the securities mentioned in Order 22, r. 17, of the Rules of the Supreme Court. *Ex parte St. John the Baptist College, Oxford*, 22 Ch. D. 93; *Re Brown*, 59 L. J. Ch. 530. Applications for such investment and payment of dividends should be made by summons. Rules of the Supreme Court, Order 55, r. 2.

71. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums from 20*l.* to 200*l.*, to be deposited or paid to trustees.

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Sums not exceeding 20% to be paid to parties.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity, of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

73. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery . . . or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Under this section a tenant for life may obtain out of the fund any properly incurred cost not payable by the promoters. *In re Earl of Berkeley's Will*, 10 Ch. 56.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

74. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery . . . on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

As to the construction of this section in the case of a lease, see *Askew v. Woodhead*, 14 Ch. D. 27; and in the case of a reversion to a lease, *In re Wooton's Estate*, 1 Eq. 589.

Upon deposit being made, the

75. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid

in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term, all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct: and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

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owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

As to who is an owner within the meaning of this section, see *Douglass v. London and North Western Railway Company*, 3 K. & J. 173.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-General of the Court of Chancery to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

77. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the

Upon deposit being made a re-

Sect. 77. undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of moneys so deposited.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery . . . may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

If there are several parties interested, the court orders an inquiry as to their respective interests. *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472.

Party in possession to be deemed the owner.

79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and, unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

The party claiming the land must be in possession as owner. *Gedye v. Commissioners of Works* [1891], 2 Ch. 630.

Costs in cases of money deposited.

80. In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason

of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

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If this section is not incorporated the costs will be in the discretion of the court. See Judicature Act, 1890, s. 5, and *In re Fisher* [1894], 1 Ch. 450.

And with respect to the conveyances of lands, be it enacted as follows:

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Form of
conveyances

These forms are not in general use.

Sect. 82. 82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Costs of conveyances.

The scale of charges under the Solicitors Remuneration Act, 1881, do not apply to vendors' costs under this Act. Rule 11 of Part I. of Sched. I. to Act. *In re Burdekin* [1895], 2 Ch. 136.

Taxation of costs of conveyances.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery . . . upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

The court has jurisdiction to review the taxation under this section. *Owen v. London and North Western Railway Company*, L. R. 3 Q. B. 54, p. 60.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows :

Payment of price to be made previous to entry, except to survey, &c.

84. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein : Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

If the promoters enter without complying with the terms of this Act

they may be restrained by injunction from continuing in possession. **Sect. 84.** (*Martin v. London, Chatham, and Dover Railway Company*, 1 Ch. App. 501), or be made liable in damages for trespass (*Ramsden v. Manchester, &c., Railway Company*, 1 Ex. 723). An action for ejectment will also lie against them. *Stretton v. Great Western and Brentford Railway Company*, 5 Ch. App. 751. The destruction of an easement is not, however, an entry within this section. *Clark v. London School Board*, 10 Ch. 120.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them, under the provisions of this or the special Act.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

If the owner refuse to allow the promoters to take possession, they can call upon the sheriff to put them in possession pursuant to section 91.

By the Railway Companies Act, 1867, this section has been amended in respect of railway companies as follows:—

PURCHASE OF LANDS.

36. Where after the passing of this Act a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect:—

Amendment (as to railway companies) of section 85 of 8 & 9 Vict. c. 18.

- (1.) The surveyor to be appointed, as in that section provided, shall be appointed by the Board of Trade instead of by two justices, and

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- all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade.
- (2.) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company.
 - (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation.
 - (4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved by two justices, be approved of by the Board of Trade after hearing the parties.

It may be noted that the sureties need only be approved by the Board of Trade when the parties differ.

Upon deposit being made cashier to give receipt.

86. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

The money is now deposited with the privity of the Paymaster-General. The procedure is governed by the Chancery Fund Rules, 1894.

Deposit to remain as a security, and to be applied under the direction of the court.

87. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the bank by way of secu-

88. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the com-

pany to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the bank in that behalf, request, and upon such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

Sect. 88.

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rity during
the time
that the
office of the
Accountant-
General is
closed.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bond fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Penalty on
the pro-
motors of
the under-
taking
entering
upon lands
without
consent
before pay-
ment of the
purchase
money.

The justices will probably still have jurisdiction under this section if it is incorporated in a light railway order, but see section 13 of the Light Railways Act, *ante*, p. 71.

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provisions hereinbefore contained shall not be held conclusive as to the right of entry on any such land by the promoters of the undertaking.

Decision of
justices not
conclusive
as to the
right of the
promoters.

91. If in any case in which according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of

Proceedings
in case of
refusal to

Sect. 91. the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant, to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

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deliver
possession
of lands.

Parties not
to be re-
quired to
sell part of
a house.

92. And be it enacted that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

It will probably be found expedient to enable a light railway company to take part only of a house or manufactory where such part proposed to be taken can be severed from the remainder of the house or manufactory without material detriment thereto. The order in such a case should, perhaps, leave the question as to whether the severance can be so effected to the arbitrator, and provide for compensation being awarded in respect of such severance. This is done in the Housing of the Working Classes Act, 1890, s. 38 (7), and Sched. II., art. 12. As to making such variation, see section 11 of the Light Railways Act, *ante*, p. 68.

The word "house" in the above section is construed widely and includes the curtilage (*Grosvenor v. Hampstead Junction Railway Company*, 26 L. J. Ch. 731), it also includes shops and warehouse, in one block (*Richards v. Swansea Improvement Company*, 9 Ch. D. 425).

And with respect to small portions of intersected land be it enacted as follows :

Owners of
intersected
lands may
insist on
sale.

93. If any lands not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith ; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

This section and the next may perhaps be omitted from or modified in orders authorising light railways. If omitted the owner will generally be entitled to compensation for severance.

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation ; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

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Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

As to making communications between portions of severed land, see section 68 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 119.

The compensation, if disputed, will be settled by an arbitrator pursuant to section 13 of the Light Railways Act. It may be in some cases advisable to vest in such arbitrator a discretion to determine whether such works and communications are necessary or not.

And with respect to copyhold lands, be it enacted as follows :

95. Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel ; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment ; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Conveyances of copyhold lands to be enrolled.

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement

Copyhold lands to be enfranchised.

Sect. 96. the same shall be determined as in other cases of disputed compensation ; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Under the Light Railways Act the compensation, in case of dispute, is to be settled by the arbitrator (section 13).

Lord of the manor to enfranchise on payment of compensation.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank of any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage ; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

As to the effect of sections 95—97, see *Lowther v. Caledonian Railway Company* [1892], 1 Ch. 73.

Apportionment of copyhold rents.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices ; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held ; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents ; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Probably the apportionment in this section is a matter to be determined by the arbitrator as provided by section 13 of the Light Railways Act.

And with respect to any such lands being common or waste lands, be it enacted as follows :

Compensation for common

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party,

other than the commoners, as shall be entitled to such right in the soil ; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined, and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners : and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Sect. 99.

— lands, where held of a manor, &c., how to be paid.

No part of a common, and no easement over any common, is to be taken without the consent of the Board of Agriculture (section 21 of the Light Railways Act).

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance ; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

Promoters purchasing from the lord of the manor cannot begin their works until they have also acquired the rights of the commoners. *Stoneham v. London, Brighton and South Coast Railway Company*, L. R. 7 Q. B. 1.

101. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

Compensation for common lands where not held of a manor how to be ascertained.

This section is subject to the provision as to settlement of disputes in section 105.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other

A meeting of the

Sect. 102. rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

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parties
interested
to be con-
vened.

Meeting to
appoint a
committee.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee
to agree
with the
promoters
of the under-
taking.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

The money will probably be devoted to adding other land to the common in lieu of that taken (Light Railways Act, s. 21). As to devoting this money for improving the common or purchasing additional land, see the Commonable Rights Compensation Act, 1882.

Disputes to
be settled
as in other
cases.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

The compensation will be settled by arbitration as provided by section 13 of the Light Railways Act.

If no com-
mittee be
appointed,
the amount

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compen-

sation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found. **Sect. 106.**
to be determined by a surveyor.

This is provided by sections 59—63, *ante*.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested as it shall think fit. Upon payment of compensation payable to commoners the lands to vest.

And with respect to lands subject to mortgage, be it enacted as follows:

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months' from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct. Power to redeem mortgages.

See section 114 as to paying off mortgages before the stipulated time.

Sect. 109. 109. If, in either of the cases aforesaid upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.

Sum to be paid when mortgage exceeds the value of the lands.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands, and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

The disputed compensation is to be settled by arbitration under section 13 of the Light Railways Act, *ante*, p. 71.

Deposit of money when refused on tender.

111. If upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or

covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit. **Sect. 111.**

112. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Sum to be paid where part only of mortgaged lands taken.

The disputed compensation is to be determined by arbitration pursuant to section 13 of the Light Railways Act.

113. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the

Deposit of money when refused on tender.

Sect. 113. same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

And with respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Consideration to be paid for release of lands from rent-charges.

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

That is by arbitration pursuant to section 13 of the Light Railways Act.

Release of part of land from charge.

116. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled

by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof. Sect. 116.

The apportionment mentioned in this section is probably a matter to be determined by arbitration under section 13 of the Light Railways Act.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished. Deposit in case of refusal to release.

118. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts. Charge to continue on lands not taken.

And with respect to lands subject to leases, be it enacted as follows:

119. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised where part only of lands under

Sect. 119. in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

lease taken,
the rent
to be
apportioned.

The apportionment mentioned in this section would seem to be a matter to be settled by arbitration under section 13 of the Light Railways Act, *ante*, p. 71. The costs are payable by the promoters under section 80 of this Act, if the money has been paid into court. *Ex parte Flower*, 1 Ch. 599.

Tenants
to be com-
pensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise, by reason of the execution of the works.

Compensa-
tion to be
made to
tenants at
will, &c.

121. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

The power of determining matters under this section is now vested in the arbitrator appointed pursuant to section 13 of the Light Railways Act.

Where
greater
interest
claimed

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the

undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly. **Sect. 122.**

than from
year to year,
lease to be
produced.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act. **Limit of time for compulsory purchase.**

The delivery of a notice to treat within the three years is a sufficient exercise of the compulsory powers within the meaning of this section, and the promoters may take possession after that period has expired. *Marquis of Salisbury v. Great Northern Railway Company*, 17 Q. B. D. 840; *Loosemore v. Tiverton*, 9 App. Cas. 480.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows :

124. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interests may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land or as near thereto as circumstances will admit. **Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.**

As to correction of omissions in plans and books of reference in the case of railways, see section 7 of the Railways Clauses Act, 1845, *ante*, p. 100.

Sect. 125. 125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any meane profits thereof, the jury, or arbitrators, as justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

How value of such lands to be estimated.

Promoters of the undertaking to pay the costs of litigation as to such lands.

126. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows :

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

127. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act : and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

These sections do not apply to land bought for extraordinary purposes. *Hooper v. Bourne*, 3 Q. B. D. 258; *City of Glasgow Union Railway Company v. Caledonian Railway Company*, L. R. 2 H. L. Sc. 160.

129. If any such persons be desirous of purchasing such lands, **Sect. 129.** then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Right of pre-emption to be claimed within six weeks.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Differences as to price to be settled by arbitration.

This arbitration will take place pursuant to section 13 of the Light Railways Act.

131. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Lands to be conveyed to the purchasers.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

Effect of the word "grant" in conveyances.

A covenant that, notwithstanding any Act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate or inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein

Sect. 132. expressed to be thereby granted, free from incumbrances done or occasioned by them :

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking, and their successors, from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land tax
and poor's
rate to be
made good.

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act ; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively ; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

By section 5 (c) of the Light Railways Act, *ante*, p. 63, where the Treasury make any advance, the order authorising the light railway may provide that for a period of not exceeding ten years that the light railway shall not be assessed at a higher rate than if the land had remained in the same condition as when it was acquired for the railway. Notice of the intention to insert such a provision must be given to the local and rating authorities.

Service of
notices upon
company.

134. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Compare the nearly similar provision in section 138 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 136.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court. **Sect. 135.**
Tender of amends.

See a similar provision in section 139 of the Railways Clauses Act, 1845, *ante*, p. 136. Further protection is extended to persons acting in execution or intended execution of Acts of Parliament by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

136. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . . Penalties to be summarily recovered before two justices.

The latter part of this section, which related to procedure before justices to recover penalties, has been repealed by the Statute Law Revision Act, 1892. The procedure for recovery of such penalties is now governed by the Summary Jurisdiction Acts.

Section 137, providing that penalties be levied by distress, has also been repealed by the Statute Law Revision Act, 1892.

Notwithstanding section 13 of the Light Railways Act, the justices will, apparently, be the proper tribunal before which to proceed for penalties.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained. Distress how to be levied.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish. . . . Application of penalties.

The latter part of the section, dealing with the application of the penalty in extra-parochial places, has been repealed. Statute Law Revision Act, 1875.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be Distress against the treasurer.

Sect. 140. found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Section 142, providing that penalties be sued for within six months, has been repealed. Statute Law Revision Act, 1892. See note to section 136.

Section 143, providing for a penalty on witnesses making default, has been repealed by the Summary Jurisdiction Act, 1884, as regards England, so far as it relates to any matter to which the Summary Jurisdiction Acts apply. See note to section 136.

Section 144, relating to form of conviction, together with Schedule (C.), has been repealed by the Statute Law Revision Act, 1892. See note to section 136.

Proceedings not to be quashed for want of form.

145. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions on giving security.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions. . . .

The latter part of the section, dealing with time for appealing, has been repealed as regards England by the Summary Jurisdiction Act, 1884. See note to section 136.

Court to make such order as they think reasonable.

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may

also order such further satisfaction to be made to the party injured **Sect. 147.** as they may judge reasonable ; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

148. Provided always, notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled An Act for regulating the Police Courts in the Metropolis, and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act ; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Receiver of the metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict. c. 71.

149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows :

150. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them ; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act so printed as aforesaid ; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain

Copies of special Act to be kept and deposited, and allowed to be inspected.

Sect. 150. plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled An Act to compel Clerks of the Peace for Counties and other Persons to take the custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.

7 Will. 4 and
1 Vict. c. 83.

This Act is the Parliamentary Documents Deposit Act, 1837. See note to Standing Orders, Appendix, *post*.

Penalty on
company
failing to
keep or
deposit.

151. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to
extend to
Scotland.

152. And be it enacted, that this Act shall not extend to Scotland.

SCHEDULE (A.).

Form of Conveyance.

I, _____, of _____, in consideration of the sum of _____ paid to me [or, as the case may be, into the Bank of England [or Bank of Ireland], in the name and with the privy of the Accountant-General of the Court of Chancery, *Ex parte* "*The Promoters of the Undertaking*" [naming them], or to A. B., of _____, and C. D., of _____, two trustees appointed to receive the same], pursuant to the [here name the special Act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal,
the _____ day of _____, in the year of our Lord _____.

THE COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

(8 VICT. CAP. 16.)

An Act for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of companies incorporated for carrying on undertakings of a public nature.

Sect. 1.

. This Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

Act to apply to all companies incorporated by Acts hereafter to be passed.

This Act is applicable to a light railway under the Light Railways Act only so far as its provisions are incorporated in the order. See Light Railways Act, ss. 11, 12 (1), 21.

2. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows:

Interpretations in this Act:

The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special Act be authorized to be executed.

"the special Act:"

"prescribed:"

"the undertaking."

The order, or the order and the Light Railways Act where the context requires it are equivalent to "the special Act." Section 12, *ante*, p. 70.

3. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Interpretations in this and the special Act:

The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name:

"Directors."

- Sect. 3.** The word "shareholder" shall mean shareholder, proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: and
- "Shareholder; "**
- "Secretary."** The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."

This section contains numerous other definitions, but as they are the same as those in section 3 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 98, it is unnecessary to repeat them here. The definitions above retained do not occur in that Act.

- Short title of the Act.** 4. And be it enacted, that in citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "the Companies Clauses Consolidation Act, 1845."

- Form in which portions of this Act may be incorporated with other Acts.** 5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act; be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses and provisions of this Act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act; and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

The descriptions thus given, which may be made use of in framing order under the Light Railways Act are as follows:—

- "With respect to the distribution of the capital into shares"—ss. 6—13.
- "With respect to the transfer and transmission of shares"—ss. 14—20.
- "With respect to the payment of subscriptions, and the means of enforcing the payment of calls"—ss. 21—28.
- "With respect to the forfeiture of shares for non-payment of calls"—ss. 29—37.
- "With respect to the borrowing of money by the company on mortgage or bond"—ss. 38—55.
- "With respect to the conversion of the borrowed money into capital"—ss. 56—60.
- "With respect to the consolidation of the shares into stock"—ss. 61—64.
- "With respect to the general meetings of the company, and the exercise of the right of voting by the shareholders"—ss. 66—80.
- "With respect to the appointment and rotation of directors"—ss. 81—89.
- "With respect to the powers of the directors, and the powers of the company to be exercised only in general meeting"—ss. 90, 91.
- "With respect to the proceedings and liabilities of the directors"—ss. 92—100.
- "With respect to the appointment and duties of auditors"—ss. 101—108.
- "With respect to the accountability of the officers of the company"—ss. 109—114.
- "With respect to the keeping of accounts, and the right of inspection thereof by shareholders"—ss. 115—119.
- "With respect to the making of dividends"—ss. 120—123.
- "With respect to the making of bye-laws"—ss. 124—127.

"With respect to the giving of notices"—ss. 135—139.

"With respect to the recovery of damages not specially provided for, and penalties"—ss. 142—160.

"With respect to the provision to be made for affording access to the special Act by all parties interested"—ss. 161, 162.

There is also a group of sections (128—134) with the heading "with respect to the settlement of disputes by arbitration," but these would appear to be superseded. See the note to the similar section of the Railways Clauses Act, 1845, *ante*, p. 99.

Sect. 5.

And with respect to the distribution of the capital of the company into shares, be it enacted as follows :

6. The capital of the company shall be divided into shares of the prescribed number and amount ; and such shares shall be numbered in arithmetical progression, beginning with number one ; and every such share shall be distinguished by its appropriate number. Capital to be divided into shares.

7. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate. Shares to be personal estate.

8. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company. Shareholders.

9. The company shall keep a book, to be called the "Register of Shareholders ;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order ; and such book shall be authenticated by the common seal of the company being affixed thereto ; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company. Registry of shareholders.

10. In addition to the said register of shareholders, the company shall provide a book, to be called the "Shareholders Address Book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several other shareholders with their respective Christian names, places of abode, and descriptions, so far as the same shall be known to the company ; and every shareholder, or if such shareholder be a corporation the clerk or agent of such corporation, may at all convenient times peruse such book gratis, and may require a copy thereof or of any part thereof ; and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence. Addresses of shareholders.

By section 34 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), copies of the address book made up to the 1st December in each

Sect. 10. year, are to be supplied by the company on payment of 5s. to any shareholder or holder of any mortgage debenture or debenture stock of the company, who may apply for a copy, and a penalty not exceeding twenty pounds is imposed for default.

Certificates of shares to be issued to the shareholders.

11. On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the schedule (A.) to this Act annexed, or to the like effect: and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificate to be evidence.

12. The said certificate shall be admitted in all courts as *prima facie* evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Certificate to be renewed when destroyed.

13. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

And with respect to the transfer or transmission of shares, be it enacted as follows:

Transfer of shares to be by deed duly stamped.

14. Subject to the regulations herein or in the special Act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the Form in the Schedule (B.) to this Act annexed, or to the like effect.

As to power of companies and local authorities to make compensation for forged transfers, and to make reasonable restrictions as to transfer, see the Forged Transfer Acts, 1891 and 1892.

Transfers of shares to be registered &c.

15. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary

shall enter a memorial thereof in a book to be called the "Register of Transfers," and shall endorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry, together with such endorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share. **Sect. 15.**

16. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him. **Transfer not to be made until calls paid.**

17. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting. **Closing of transfer books.**

18. If the interest of any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special Act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require: and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a master or master extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof. **Transmission of shares by other means than transfer to be authenticated by a declaration.**

Sect. 19. 19. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

Company not bound to regard trusts. 20. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company, or if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows:

Subscriptions to be paid when called for. 21. The several persons who have subscribed any money towards the undertaking, or their legal representatives, respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special Act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

Power to make calls. 22. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days' notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.

Interest to be paid to calls unpaid. 23. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

24. It shall be lawful [for the company, if they think fit, to receive from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares, beyond the sums actually called for ; and upon the principal moneys so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

Sect. 24.

Power to allow interest on payment of subscriptions before call.

25. If at the time appointed by the company for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable.

Enforcement of calls by action.

There may be some question as to what should now be considered as the "rate allowed by law" or as the "legal rate" of interest, any rate being lawful since the repeal by the Act of 1854 (17 & 18 Vict. c. 90) of the usury laws. Probably it would either be five per cent. per annum on the ground that that was the rate intended when the Act passed, or four per cent. on the ground that the law fixes that as the rate of interest which judgments under 1 & 2 Vict. c. 110, s. 17, carry until satisfied. All questions may be easily set at rest by providing in the order what should be the rate of interest.

26. In any action or suit to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special Act.

Declaration in action for calls.

The material facts to be proved in order to establish a *prima facie* case in such an action are, that the calls sued for were made, that the defendant was then a shareholder, that the time for payment has elapsed, that the defendant has had due notice of the call and has not paid (see the next section). By Order XIX., r. 14, it now is unnecessary to state in the pleading that the time has elapsed or that due notice was given, averments of the performance of such conditions precedent being under that rule to be implied in the first instance. Consequently the above enactment does not conflict with the present system of pleading, and its provisions, *mutatis matandis*, apply to statements of claim in such actions.

27. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special Act ; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other

Matter to be proved in action for calls.

Sect. 27. matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

Proof of
proprietor-
ship.

28. The production of the register of shareholders shall be *prima facie* evidence of such defendant being a shareholder, and of the number and amount of his shares.

And with respect to the forfeiture of shares for non-payment of calls, be it enacted as follows:

Forfeiture
of shares
for non-
payment
of calls.

29. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

The Companies Clauses Act, 1863, contains provisions with regard to the cancellation of forfeited shares, which may also be incorporated in an order under the Light Railways Act. See sections 3—11 of the Companies' Clauses Act, 1863, *post*, pp. 232—234. The company may at the same time bring or continue an action brought for calls due and exercise the above power of forfeiture. *Great Northern Railway Company v. Kennedy*, 4 Ex. 417. See further as to sale of forfeited shares, sections 30—35, *infra*.

Notice of
forfeiture
to be given
before de-
claration
thereof.

30. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the *London* or *Dublin Gazette*, according as the company's principal place of business shall be situate in England or Ireland, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

Forfeiture
to be con-
firmed by
a general
meeting.

31. The said declaration of forfeiture shall not take effect so as to authorise the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such

declaration of forfeiture shall have been given ; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of. **Sect. 31.**

32. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit : and any shareholder may purchase any forfeited share so sold. Sale of forfeited shares.

33. A declaration in writing, by some credible person not interested in the matter, made before any justice, or before any master or master extraordinary of the High Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated ; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share ; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase : and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale. Evidence as to forfeiture of shares.

34. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture : and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter. No more shares to be sold than sufficient for payment of calls.

35. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid. On payment of calls before sale the forfeited shares to revert.

If the shares are forfeited under the above sections, and are not sold, the shareholder is entitled to be credited with the market price of the shares. *Stubbs v. Lister*, 1 Y. & C. 81.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows :

36. If any execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the Execution against shareholders to the extent of their

Sect. 36. extent of their shares respectively in the capital of the company not then paid up: provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the persons sought to be charged; and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

shares in
capital not
paid up.

Leave to issue execution is now obtained by summons. Rules of the Supreme Court, Order XLII., r. 23.

Reimburse-
ment of
such share-
holders.

37. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows:

Power to
borrow
money.

38. If the company be authorised by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorised to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

This authority can be conferred by an order under the Light Railways Act. See Chaps. IV.—VI., *ante*, pp. 32—48.

Power to
re-borrow.

39. If, after having borrowed any part of the money so authorised, to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond.

Evidence of
authority
for borrow-
ing.

40. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special Act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorising the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having

been made : and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid. **Sect. 40.**

41. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated ; and every such mortgage deed or bond may be according to the Form in the Schedule (C.) or (D.) to this Act annexed, or to the like effect. **Mortgages and bonds to be stamped.**

42. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorised. **Rights of mortgagees.**

43. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company. **Application of calls, notwithstanding mortgage.**

44. The respective obligees in such bonds shall, proportionally according to the amount of the moneys secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorised, or otherwise howsoever. **Rights of obligees.**

45. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register ; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward. **Register of mortgages and bonds.**

46. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person ; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated ; and every such transfer may be according to the Form in the Schedule (E.) to this Act annexed, or to the like effect. **Transfers of mortgages and bonds to be stamped.**

47. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in **Transfers of mortgages and bonds to be registered.**

Sect. 47. the case of the original mortgage ; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects ; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured ; and for such entry the company may demand a sum not exceeding the prescribed sum, or where no sum shall be prescribed, the sum of two shillings and sixpence ; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Payment
of interest
on moneys
borrowed.

48. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

Transfers of
interest to
be stamped.

49. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

Repayment
of money
borrowed at
a time fixed.

50. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond ; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond ; and if no other place of payment be inserted in such mortgage, deed, or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment
of money
borrowed
where no
time fixed.

51. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose ; and in the like case the company may at any time pay off the money borrowed, on giving the like notice ; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London or Dublin Gazette*, according as the principal office of the company shall be in England or Ireland, and in some newspaper as after mentioned.

Interest to
cease on
expiration
of notice
to pay off
mortgage
or bond.

52. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless on demand of payment made pursuant to such notice,

or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond. **Sect. 52.**

53. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee, may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of interest, when to be enforced by appointment of a receiver.

Arrears of principal and interest.

54. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Appointment of receiver.

55. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

Access to account books by mortgagees.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:

56. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special Act, to raise the additional sum so authorised to be borrowed, or any part thereof, by creating

Power to convert loan into capital.

Sect. 56. new shares of the company, instead of borrowing the same, or, having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

New shares to be considered same as original shares.

57. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

If old shares at premium new shares to be offered to the shareholders.

58. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special Act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed to each shareholder according to his address in the shareholders address book, or left at his usual or last place of abode.

Shares to vest in the parties accepting; otherwise to be disposed of by the directors.

59. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

See also section 20 of the Companies Clauses Act, 1863, *post*, p. 236.

If old shares not at a premium, new to be issued as company think fit.

60. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

And with respect to the consolidation of the shares into stock, be it enacted as follows:

Power to consolidate shares into stock.

61. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money

subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein. **Sect. 61.**

62. After such conversion or consolidation shall have taken place all the provisions contained in this or the special Act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulatious and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special Act; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or if no amount be prescribed a sum not exceeding two shillings and sixpence. Proprietors of stock may transfer the same.

63. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock;" and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking. Register of stock.

64. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively. Proprietors of stock entitled to dividends.

65. And be it enacted, that all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special Act, and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution. Application of capital.

The costs of obtaining the order under the Light Railways Act will be equivalent to those of obtaining the special Act. See the note to section 2 of this Act, *ante*, p. 197.

Under this section the promoters are entitled to recover their costs of and incident to the obtaining the special Act by action against the company; but an agent or other person employed by them must sue his employers, and not the company. See *Wyatt v. Metropolitan Board of Works*, 11 C. B. (N.S.) 744; *In re Kent Tramways Company*, 11 Ch. D. 312; *In re Skegness Tramways Company*, 41 Ch. D. 215; and see *Mann v. Edinburgh Tramways Company* [1893], A. C. 69.

Sect. 66. And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows:

Ordinary meetings to be held half-yearly. 66. The first general meeting of the shareholders of the company shall be held within the prescribed time, or if no time be prescribed, within one month after the passing of the special Act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

Business at ordinary meetings. 67. No matters, except such as are appointed by this or the special Act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Extra-ordinary meetings. 68. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting;" and such meetings may be convened by the directors at such times as they think fit.

Business at extra-ordinary meetings. 69. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Extra-ordinary meetings may be required by shareholders. 70. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days' public notice thereof.

Notice of meetings. 71. Fourteen days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special Act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

Quorum for a general meeting. 72. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the

prescribed quorum, and if no quorum be prescribed then shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one-twentieth of the capital of the company, shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present no business shall be transacted at the meeting, other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*. **Sect. 72.**

73. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or in the absence of the chairman and deputy chairman, some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting. **Chairman at general meetings.**

74. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place. **Business at meetings and adjournments.**

75. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares: Provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him. **Votes of shareholders.**

76. The votes may be given either personally or by proxies, being shareholders, authorised by writing according to the form in the Schedule (F.) to this Act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes. **Manner of voting.**

This section is amended by the Companies Clauses Act, 1888 (51 & 52 Vict. c. 48), as corrected by the Companies Clauses Act, 1889 (52 & 53 Vict. c. 37), so as to permit companies or corporations holding shares to appoint as their proxy one of their members who is not himself a shareholder in the company at whose meeting he is voting. See *post*, p. 239.

Sect. 77. 77. No person shall be entitled to vote as a proxy, unless the instrument appointing such proxy have been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

Regulations
as to
proxies.

Votes of
joint share-
holders.

78. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of
lunatics and
minors, &c,

79. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Proof of a
particular
majority of
votes only
required in
the event of
a poll being
demanded.

80. Whenever in this or the special Act the consent of any particular majority of votes at any meeting of the company is required in order to authorise any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorising such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same.

And with respect to the appointment and rotation of directors, be it enacted as follows:

Number of
directors.

81. The number of directors shall be the prescribed number.

By section 2, *supra*, "prescribed" means prescribed for that purpose in the special Act. In the order authorising the light railway this must be provided for in cases where a new company is formed.

Power to
vary the
number of
directors.

82. Where the company shall be authorized by the special Act to increase or to reduce the number of the directors it shall be lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of
directors.

83. The directors appointed by the special Act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special Act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not

continued in office, the directors appointed by the special Act being eligible as members of such new body ; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained ; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned. **Sect. 83.**

84. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place ; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year. Existing directors continued on failure of meeting for election of directors.

85. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares ; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director ; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director. Qualification of directors.

86. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director. Cases in which office of director shall become vacant.

87. Provided always, that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special Act ; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company. Shareholder of an incorporated joint stock company not disqualified by reason of contracts.

88. The directors appointed by the special Act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot Rotation of directors.

Sect. 88. among the directors, unless they shall otherwise agree; (that is to say,)

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office :

At the end of the second year the prescribed number, and if no number be prescribed one-half of the remaining number of such directors, to be determined in like manner, shall go out of office :

At the end of the third year the prescribed number, and if no number be prescribed the remainder of such directors, shall go out of office :

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders ; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner ; nevertheless every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director : Provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

Supply of
occasional
vacancies in
office of
directors.

89. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director ; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows :

Powers of
the
company to
be exercised
by the
directors.

90. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the special Act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special Act ; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

Powers of
the com-
pany not to

91. Except as otherwise provided by the special Act, the following powers of the company, (that is to say,) the choice and removal of

the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorised by the special Act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

Sect. 91.
—
be exercised
by the
directors.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows :

92. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place ; and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors ; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as one of the directors.

Meetings of
directors.

93. At the first meeting of directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period ; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy ; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Permanent
chairman of
directors.

94. If at any meeting of the directors neither the chairman nor deputy chairman be present the directors present shall choose some one of their number to be chairman of such meeting.

Occasional
chairman of
directors.

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them.

Committees
of directors.

Powers of
committees.

96. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment ; and no such committee shall exercise the powers intrusted to them except at a meeting at which there shall be present the prescribed quorum, or if no quorum

Meetings of
Committees.

Sect. 96. be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Contracts by committee or directors, how to be entered into. **97.** The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows (that is to say):—

With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

This section is of importance, and should be incorporated, or some equivalent inserted in all orders under the Light Railways Act, because with it the doctrines of the common law as to seal would apply. By them, corporations can, in general, contract only under their seal, except in respect of matters of every day or trivial occurrence. See p. 17, *ante*; "Browne and Theobald on Railways" (2nd edit.), p. 107; *East London Waterworks v. Bailey*, 4 Bing. 283; *Young v. Mayor of Leamington*, 8 App. Cas. 517.

Proceedings to be entered in a book, and to be evidence.

98. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made, or contracts entered into by the directors, and of the orders and proceedings, of all meetings of the company, and of the directors and committees of directors, to be duly

entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors ; and every such entry shall be signed by the chairman of such meeting ; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved. **Sect. 98.**

99. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director. Informalities in appointment of directors not to invalidate proceedings.

100. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever ; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors ; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any Acts done by them, and for all losses, costs and damages which they may incur in the execution of the powers granted to them ; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any. Directors not to be personally liable. Indemnity of directors.

And with respect to the appointment and duties of auditors, be it enacted as follows :

101. Except where by the special Act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special Act, elect the prescribed number of auditors, and, if no number is prescribed, two auditors, in like manner as is provided for the election of directors ; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained ; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead. Election of auditors.

Sect. 102. 102. Where no other qualification shall be prescribed by the special Act, every auditor shall have at least one share in the undertaking ; and he shall not hold any office in the company, nor be in any other manner interested in its concerns except as a shareholder.

Rotation of auditors. 103. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree and afterwards by seniority,) shall go out of office at the first ordinary meeting in each year ; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

Vacancies in office of auditor. 104. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

Failure of meeting to elect auditor. 105. The provision of this Act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed.

Delivery of balance sheet, &c., by directors to auditors. 106. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet, fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

Duty of auditors. 107. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Powers of auditors. 108. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same ; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

And with respect to the accountability of the officers of the company, be it enacted as follows :

Security to be taken from officers intrusted with money. 109. Before any person intrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

Officers to account, on demand. 110. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the company ; and such account shall state how, and to whom, and for what purpose such moneys shall have been disposed of ; and, together with such account, such officer shall deliver the vouchers and receipts for such payments ; and every such officer shall pay to the directors, or to

any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts. **Sect. 110.** ---

111. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear either upon confession of such officer or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Summary
remedy
against
parties
failing to
account.

112. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Officers
refusing to
deliver up
documents.
&c., to be
imprisoned.

113. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

Where
officer about
to abscond a
warrant
may be
issued in
the first
instance.

Sect. 114. 114. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

Sureties not to be discharged.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows :

Accounts to be kept.

115. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid.

Books to be balanced.

116. The books of the company shall be balanced at the prescribed periods, and, if no periods be prescribed, fourteen days at least before each ordinary meeting ; and forthwith on the books being so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half year : and previously to each ordinary meeting such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Inspection of accounts by shareholders at stated times.

117. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed, for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company ; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Balance sheet to be produced at the meeting.

118. The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

Book-keeper to allow inspection of the accounts at the appointed times.

119. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose ; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting ; and if he fail to permit any such shareholder to inspect such books, or take such copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

And with respect to the making of dividends, be it enacted as follows :

Previously to declaration of

120. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be

prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Sect.120.

dividends a scheme to be prepared.

A dividend when declared constitutes a debt from the company to the shareholder, and the Statute of Limitations runs from the date on which it is payable. *In re Severn and Wye Railway Company* [1896], 1 Ch. 559.

121. The company shall not make any dividend whereby their capital stock will be in any degree reduced: Provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Dividend not to be made so as to reduce capital.

122. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

Power to directors to set apart a fund for contingencies.

123. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Dividend not to be paid unless all calls paid.

And with respect to the making of bye-laws, be it enacted as follows:

124. It shall be lawful for the company from time to time to make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company: and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.

Power to make bye-laws for the officers of the company.

See the similar powers in the Railways Clauses Act, 1845, s. 109, and the note thereto, *ante*, p. 130.

125. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

Fines for breach of such bye-laws.

Sect. 126. 126. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such justice shall think fit.

Bye-laws to be so framed as that penalties may be mitigated.

Evidence of bye-laws.

127. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws in all cases of prosecution under the same.

Sections 128—134. These sections will not be applied to light railways; they are, however, similar to those in the Railways Clauses Act, 1845, *ante*, pp. 134—136, which see with the notes thereon.

And with respect to the giving of notices, be it enacted as follows :

Service of notices upon company.

135. Any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

See the note to section 138 of the Railways Clauses Act, 1845, *ante*, p. 136, and that to section 134 of the Lands Clauses Act, 1845, *ante*, p. 192.

Service by company on shareholders.

136. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice ; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post office.

Notices to joint proprietors of shares.

137. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders ; and notice so given shall be sufficient notice to all the proprietors of such share.

Notices by advertisement.

138. All notices required by this or the special Act, or any Act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

Authentication of notices.

139. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or

by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print. **Sect. 139.**

140. And be it enacted, that if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or Act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company. **Proof of debts in bankruptcy.**

141. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit; and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court. **Tender of amends.**

This section and the corresponding section of the Railways Clauses Act, 1845, s. 139, are superseded by the Public Authorities Protection Act, 1893, *post*, p. 293, as also is section 135 of the Lands Clauses Act, 1845. See *ante*, pp. 136, 193.

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows:

Provisions almost identical will be found in the Lands Clauses Act, 1845, ss. 136—149, *ante*, p. 193, and the Railways Clauses Act, 1845, ss. 140—163, *ante*, p. 137.

142. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly. **Provision for damages not otherwise provided for.**

143. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses, payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall **Distress against the treasurer.**

Sect. 143. issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Method of proceeding before justices in questions of damages, &c.

144. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of penalties.

145. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

146. If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

147. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

The remainder of this section is repealed by the Summary Jurisdiction Act (47 & 48 Vict. c. 43).

Sections 148 and 149 are also repealed by 47 & 48 Vict. c. 43.

150. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Sect. 150.

Distress how to be levied.

151. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form, &c.

152. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish

Application of penalties.

The provision for the application of the penalty in extra parochial places with which this section originally ended is repealed by the Statute Law Revision Act, 1875.

Section 153, providing that penalties be sued for within six months, is repealed by the Summary Jurisdiction Act, 1884, but section 11 of the Summary Jurisdiction Act, 1848, is to same effect.

154. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Damage to be made good in addition to penalty.

155. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall

Penalty on witnesses making default.

Sect. 155. refuse to be examined upon oath or to give evidence before such justice every such person shall forfeit a sum not exceeding five pounds for every such offence.

This is repealed as to matters within the Summary Jurisdiction Acts by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

Transient offenders.

156. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Section 157, as to the form of conviction, is repealed by 47 & 48 Vict. c. 43.

Proceedings not to be quashed for want of form, &c.

158. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions on giving security.

159. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county. . . .

The rest of this section is repealed by 47 & 48 Vict. c. 43.

Court to make such order as they think reasonable.

160. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:

Copies of special Act to be kept and deposited, and allowed to be inspected.

161. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city

into which or within one mile of which the works shall extend, a copy of such special Act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections, by an Act passed in the first year of the reign of Her. present Majesty, intituled An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament. Sect. 161.
7 Will. 4. &
1 Vict. c. 63

162. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. Penalty on company failing to keep or deposit such copies.

Section 163—Act not to apply to Scotland.

164. Provided always and be it enacted, that if any shareholder residing in Scotland shall fail to pay the amount of any call made upon him by the company in respect of any share held by him it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by "The Companies Clauses Consolidation (Scotland) Act, 1845," in case the same shall pass into a law, provided in regard to shareholders of any company in Scotland. For recovering calls against shareholders residing in Scotland.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A).

Form of Certificate of Share.

"The Company."

Number

This is to certify, that A. B. of is the proprietor of the share number of "The Company," subject to the regulations of the said company. Given under the common seal of the said company, the day of in the year of our Lord

SCHEDULE (B).

Form of Transfer of Shares or Stock.

I of in consideration of the sum of paid to me by of do hereby transfer to the said share [or shares], numbered in the undertaking called "The

Sched. Company " [or pounds consolidated stock in the
 undertaking called "The Company" standing (or part of
 the stock standing) in my name in the books of the company], to
 hold unto the said his executors, administrators, and assigns
 [or successors and assigns], subject to the several conditions on which
 I held the same at the time of the execution hereof : and I the said
 do hereby agree to take the said share [or shares] [or stock],
 subject to the same conditions. As witness our hands and seals,
 the day of .

SCHEDULE (C.).

Form of Mortgage Deed.

 "The Company."
 Mortgage, number £
 By virtue of [*here name the special Act*], we, "The Com-
 pany," in consideration of the sum of pounds paid to us by
 A. B. of do assign unto the said A. B., his executors,
 administrators, and assigns, the said undertaking, [and (*in case such*
loan shall be in anticipation of the capital authorised to be raised) all
 future calls on shareholders], and all the tolls and sums of money
 arising by virtue of the said Act, and all the estate, right, title, and
 interest of the company in the same ; to hold unto the said A. B.,
 his executors, administrators, and assigns, until the said sum of
 pounds, together with interest for the same at the rate
 of for every one hundred pounds by the year, be satisfied
 [the principal sum to be repaid at the end of years from the
 date hereof (*in case any period be agreed upon for that purpose*)], [at
 or any place of payment other than the principal office of the
company]. Given under our common seal, this day of
 in the year of our Lord .

SCHEDULE (D.).

Form of Bond.

 "The Company."
 Bond, number £
 By virtue of [*here name the special Act*], we "The Com-
 pany," in consideration of the sum of pounds to us in hand
 paid by A. B. of do bind ourselves and our successors unto
 the said A. B., his executors, administrators, and assigns, in the
 penal sum of pounds.
 The condition of the above obligation is such, that if the said
 company shall pay to the said A. B., his executors, administrators,
 or assigns, [at (*in case any other place of payment than the*
principal office of the company be intended)], on the day of
 which will be in the year one thousand eight hundred

and _____, the principal sum of _____ pounds, together with **Sched.**
 interest for the same at the rate of _____ pounds per centum per
 annum, payable half-yearly on the _____ day of _____ and
 _____ day of _____ then the above-written obligation is to
 become void, otherwise to remain in full force. Given under our
 common seal, this _____ day of _____ one thousand eight
 hundred and _____.

SCHEDULE (E.).

Form of Transfer of Mortgage or Bond.

I, *A. B.*, of _____ in consideration of the sum of _____ paid
 to me by *G. H.* of _____ do hereby transfer to the said *G. H.*, his
 executors, administrators, and assigns, a certain bond [or mortgage]
 number _____ made by "The _____ Company" to
 bearing date the _____ day of _____ for securing the sum of
 _____ and _____ interest [or, if such transfer be by endorsement,
 the within security], and all my right, estate, and interest in and to
 the money thereby secured [and if the transfer be of a mortgage, and
 in and to the tolls, money, and property thereby assigned]. In
 witness whereof I have hereunto set my hand and seal, this
 day of _____ one thousand eight hundred and _____.

SCHEDULE (F.).

Form of Proxy.

A. B. _____ one of the proprietors of "The _____ Company,"
 doth hereby appoint *C. D.* of _____ to be the proxy of the said
A. B., in his absence to vote in his name upon any matter relating
 to the undertaking proposed at the meeting of the proprietors of the
 said company to be held on _____ day of _____ next, in
 such manner as he the said *C. D.* doth think proper. In witness
 whereof the said *A. B.* hath hereunto set his hand [or, if a corpora-
 tion, say the common seal of the corporation], the _____ day
 of _____ one thousand eight hundred and _____.

THE COMPANIES CLAUSES ACT, 1863.

(26 & 27 VICT. CAP. 118.)

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to the Constitution and Management of Companies incorporated for carrying on Undertakings of a Public Nature. [28th July, 1863.]

8 & 9 Vict.
cc. 16 & 17.

WHEREAS the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, were passed in order to comprise in one general Act such provisions relating to the constitution and management of joint stock companies incorporated for the purpose of carrying on undertakings of a public nature in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament relating to such companies :

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to such companies, and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves :

Be it therefore enacted as follows :

Sect. 1.

Short title.

1. This Act may be cited as the Companies Clauses Act, 1863.

Division of
Act into
parts.

2. This Act shall be deemed to be divided into Four Parts, as follows :

Part I. relating to cancellation and surrender of shares ;

Part II. relating to additional capital ;

Part III. relating to debenture stock ;

Part IV. relating to change of name ;

PART I.**CANCELLATION AND SURRENDER OF SHARES.**

Application
of Part I.

3. This part of this Act shall apply to every company incorporated either before or after the passing of this Act which obtains a special Act incorporating this part of this Act.

Power to
company
to cancel
forfeited
shares.

4. Where any share of the capital of the company is after the passing of this Act declared forfeited under and in pursuance of the provisions with respect to the forfeiture of shares for non-payment of calls contained in the Companies Clauses Consolidation Act, 1845 and the Companies Clauses Consolidation (Scotland) Act, 1845 respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given,—then and in every such case, if the director

of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest, and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold shall be cancelled, and the share shall thereupon be cancelled accordingly.

Sect. 4.

5. A declaration in writing made by some credible person, in England or Ireland before a justice, and in Scotland before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest, and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the Stock Exchange prescribed in the special Act, and if no Stock Exchange is prescribed then upon the Stock Exchange, as to England of the City of London, and as to Scotland of the City of Edinburgh, and as to Ireland of the City of Dublin shall be sufficient evidence of the fact so declared.

Evidence for cancellation of forfeited shares.

6. Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise.

Payment of calls in arrear notwithstanding cancellation.

7. Provided always, that if the company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due; provided also, that if payment of all arrears of calls, interest, and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the company's register accordingly.

Value of forfeited shares to be deducted from amount due in respect thereof.

8. Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled, and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

Company may cancel forfeited shares, with consent of holders.

9. The company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

As to surrender of shares.

10. The company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

No money to be paid for cancellation or surrender.

11. The company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such

Power to create shares in

Sect. 11. amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the company, and may from time to time fix the amounts and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon: Provided, that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

—
lieu of cancelled,
forfeited
&c., shares.

PART II.

ADDITIONAL CAPITAL.

New Ordinary Shares or Stock.

12. Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorised by any special Act hereafter passed, and incorporating this part of this Act, to raise any additional sum or sums by the issue of new ordinary shares, or by the issue of new ordinary stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act, and if no proportion is prescribed, then of three-fifths of such votes, may, for the purpose of raising the additional sum or sums, from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times, as the company thinks fit, of such new ordinary stock as the company thinks fit.

Regulations
as to crea-
tion and
issue of
ordinary
shares or
new ordi-
nary stock.

Preference Shares or Stock.

13. Where any such company is authorised by any special Act hereafter passed and incorporating this part of this Act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the like sanction as aforesaid, may, for the purpose of raising such additional sum or sums, from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred, or other dividend or interest, not exceeding the rate prescribed in the special Act, and if no rate is prescribed then not exceeding the rate of five pounds per centum per annum, and subject (as to any such new shares) to the payment of calls of such amounts and at such times as the company from time to time thinks fit:

Regulations
as to crea-
tion and
issue of new
preference
shares
or new
preference
stock.

Provided always, that any preference assigned to any shares or stock so issued under the special Act shall not effect any guarantee or any preference or priority in the payment of dividend or interest on any shares or stock, that may have been granted by the company under or confirmed by any previous Act, or that may be otherwise lawfully subsisting.

Sect. 13.

Saving rights of preference shareholders.

14. The preference shares or preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in any year ending on the day prescribed in the special Act, and if no day is prescribed, then on the thirty-first day of December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

Preference shares to be entitled to dividends only out of the profits of each year

15. The terms and conditions to which any preference share or preference stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock.

Terms, &c. to be stated on certificates.

General Provisions as to new Shares or Stock.

16. If, after having created new shares or new stock, the company determines not to issue the whole of the new shares or new stock, they may cancel the unissued new shares or new stock.

Unissued shares and stock may be cancelled.

17. If, at the time of the issue of new shares or new stock, the ordinary shares or ordinary stock of the company are or is at a premium, then, unless the company before the issue of the new shares or new stock otherwise determines, the new shares or new stock then issued shall be of such amount as will conveniently allow the same to be apportioned among the then holders of the ordinary stock and ordinary shares, respectively, in proportion, as nearly as conveniently may be, to the ordinary shares and ordinary stock held by them respectively, and shall be offered to them at par in that proportion: Provided, that it shall not be obligatory on the company so to apportion or offer any new shares or new stock unless the amount of every new share or portion of new stock to be so offered would if so apportioned be at least the sum prescribed in the special Act, and if no sum is prescribed then at least ten pounds.

If ordinary stock or shares at a premium, new shares or stock to be offered to existing ordinary shareholders.

18. The offer of new shares or new stock shall be made by letter under the hand of the treasurer or secretary of the company given to every such shareholder or stockholder as aforesaid, or sent by post addressed to him according to his address in the shareholders or stockholders address book, or left for him at his usual or then last known place of abode in England, Scotland, or Ireland (as the case may require); and every such offer made by letter sent by post shall be considered as made on the day on which the letter in due course of delivery ought to be delivered at the place to which it is addressed.

Offer to be made by letter.

19. The new shares or portions of new stock so offered shall vest in and belong to the shareholders or stockholders who accept the same, or their nominees.

New shares or stock to vest on acceptance.

Sect. 20. 20. If any shareholder or stockholder fails for the time prescribed in the special Act, and if no time is prescribed then for one month, after the offer to him of new shares or new stock, to signify his acceptance of the same or any part thereof, then and in every such case at the expiration of that period he shall be deemed to have declined the offer of such new shares or new stock or such part thereof as aforesaid, and the same may be disposed of by the company as hereinafter provided :

As to disposal of new shares or stock to others.

Power to enlarge time for accepting new shares or stock.

Provided, that where a shareholder or stockholder, from absence abroad or other cause satisfactory to the directors of the company, omits to signify within the time aforesaid his acceptance of the new shares or new stock offered to him, the directors, if they think proper, may permit him to accept the same, notwithstanding that such time has elapsed.

General power to dispose of unappropriated new shares and stock.

21. Subject to the foregoing provisions, the company may from time to time dispose of new shares and new stock at such times, to such persons, on such terms and conditions, and in such manner as the directors think advantageous to the company

The proviso at the end of this section has been repealed by the Companies Clauses Act, 1869, s. 5, and the Statute Law Revision Act, 1875.

PART III.

DEBENTURE STOCK.

Regulations as to creation and issue of debenture stock.

22. Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorised by any special Act hereafter passed, and incorporating this part of this Act, to create and issue debenture stock,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act, and if no proportion is prescribed, then of three-fifths of such votes, may from time to time raise all or any part of the money which for the time being they have raised, or are authorized to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges, as the company thinks fit, of stock to be called debenture stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and perpetual preferential interest(a) payable half-yearly or otherwise, and commencing at once, or at any future time or times, when and as the debenture stock is issued, or otherwise, as the company thinks fit.

(a) Words omitted were repealed as regards railways by section 24 of the Railway Companies Act, 1867, and generally by the Companies Clauses Act, 1869, s. 1.

Debenture stock to be

23. Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company, prior to all shares or stock of

the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate. **Sect. 23.**
a prior charge.

As to priorities of mortgages and debenture stock, see also section 23 of the Railway Companies Act, 1867.

24. The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority. **Interest on debenture stock to be a primary charge.**

25. If within thirty days after the interest on any such debenture stock is payable the same is not paid, any one or more of the holders of the debenture stock holding, individually or collectively, the sum in nominal amount thereof prescribed in the special Act, and if no sum is prescribed, then a sum equal to one-tenth of the aggregate amount which the company is for the time being authorized to raise by mortgage, by bond, and by debenture stock, or the sum of ten thousand pounds, whichever of the two last-mentioned sums is the smaller sum, may (without prejudice to the right to sue in any court of competent jurisdiction for the interest in arrear) require the appointment in England or Ireland of a receiver, and in Scotland of a judicial factor. **Payment of arrears may be enforced by appointment of receiver or judicial factor.**

26. Every such application for a receiver shall be made to two justices, and every such application for a judicial factor shall be made to the court of session; and on any such application the justices or court (as the case may be), by order in writing, after hearing the parties, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of the interest, until all the arrears of interest then due on the debenture stock, with all costs, including the charges of receiving the tolls or sums, are fully paid; and upon such appointment being made all such tolls or sums shall be paid to and received by the person so appointed; and all money so received shall be deemed so much money received by or to the use of the several persons interested in the same, according to their several priorities. **Mode of appointing receiver or judicial factor.**

The receiver or judicial factor shall distribute rateably and without priority, among all the proprietors of debenture stock to whom interest is in arrear, the money which so comes to his hands, after applying a sufficient part thereof in or towards satisfaction of the interest on the mortgages and bonds of the company.

As soon as the full amount of interest and costs has been so received, the power of the receiver or judicial factor shall cease, and he shall be bound to account to the company for his acts or introductions or the sums received by him, and to pay over to the company any balance that may be in his hands.

27. If the interest on debenture stock is in arrear for thirty days next after any of the respective days whereon the same is payable, **Arrears may be**

Sect. 27. the holder for the time being thereof may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any court of competent jurisdiction.

recovered
by action
or suit.

Debenture
stock to be
registered.

28. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee, bondholder, debenture stock holder, shareholder, and stockholder of the company, without the payment of any fee or charge.

Company
to deliver
certificate
to holders of
debenture
stock.

29. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him; and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, *mutatis mutandis*, to certificates of debenture stock.

Mortgages
not affected
by this Act.

30. Nothing herein or in the special Act authorising the issue of debenture stock contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise money on mortgage or bond, but the holders of all such mortgages and bonds shall, during the continuance thereof respectively, be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if the special Act authorising the issue of debenture stock had not been passed.

Holders of
debenture
stock not to
vote.

31. Debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this Act or the special Act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money paid up in respect of the debenture stock.

Application
of money
raised.

32. Money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

Separate
accounts of
debenture
stock.

33. Separate and distinct accounts shall be kept by the company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

Borrowing
powers
extin-
guished to

34. The powers of borrowing and re-borrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

35. The provisions of this part of this Act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this Act wherever debenture stock is mentioned therein. **Sect. 35.**

—
extent of
debenture
stock.

Application
of Part III.
to mortgage
preference
stock, and
funded
debt.

Part IV. of this Act relates merely to change of name and provides that a change of name shall in no way affect the rights and liabilities of the company.

The material parts of the Companies Clauses Act, 1869 (32 & 33 Vict. c. 48), are referred to in the notes to the above Act.

COMPANIES CLAUSES CONSOLIDATION ACT, 1888.

(51 & 52 VICT. CAP. 48.)

An Act to amend the Companies Clauses Consolidation Act, 1845, in respect to voting by proxy.

1. This Act may be cited as the Companies Clauses Consolidation Act, 1888, and the Companies Clauses Consolidation Act, 1845, and this Act may be cited together as the Companies Clauses Consolidation Acts, 1845 and 1888; and this Act shall be construed together with the said Act as part thereof. **Short title.**

2. To section seventy-six of the Companies Clauses Consolidation Act, 1845, the following words shall be added: "Provided, that where the shareholder is [a member of] a body corporate, the proxy may be any member of such body, though not personally a shareholder in the company." **Amendment of 8 & 9 Vict. c. 18, s. 76, as to proxies.**

This section is amended by the Companies Clauses Consolidation Act, 1889, which was passed to remedy the obvious mistake of inserting the words printed above in brackets. Those words are now repealed, and the section, therefore, is to be read without the words "a member of."

3. Such a proxy shall, during the continuance of his appointment, be taken in virtue thereof to be a shareholder in the company to which his appointment relates, holding the number of shares held by the corporation by whom he is appointed, for all purposes except the transfer of any such share or the giving receipts for any dividend thereon. **Proxy to be taken to be shareholder.**

4. The appointment may be made and revoked in the following form:— **Forms of proxy papers.**

FORMS OF PROXY PAPERS.

1. General Appointment.

We, the _____, being a body corporate, and one of the proprietors of the _____ company, hereby appoint A. B., of _____, who is hereby certified to be a member of this corporation, to be our proxy, to vote in our name as he shall think proper upon any matter relating to the several

Forms. undertakings proposed at any meeting of the said company to be held during the continuance of this appointment, and otherwise to be our representative in such company.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is hereto set this day of .

2. Revocation of General Proxy.

We, the , hereby revoke the appointment of , of , who is our proxy in the company, made by an instrument under our common seal, and dated the day of .

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is set hereto the day of .

[An instrument in this form shall not require any stamp.]

3. Special Appointment.

We, the , being a body corporate, and one of the proprietors of the company, do hereby appoint *A. B.*, of , who is hereby certified to be a member of this corporation, to vote in our name as he shall think proper upon any matter relating to the said undertaking proposed at the meeting of the proprietors of the said company to be held on the day of next, or at any adjournment thereof.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is set hereto this day of .

ENACTMENTS MENTIONED IN SCHEDULE II.

The following sections of various Acts of Parliament, down to and including section 3 of 52 & 53 Vict. c. 57, are placed in the second schedule of the Light Railways Act, *ante*, p. 82, and do not apply to light railways constructed under the Light Railways Act, unless expressly made to do so by the order authorising the particular railway. Section 12, *ante*, p. 70. They contain for the most part provisions as to safety, many of which will probably not be applied to light railways, but some of the enactments therein will probably be adopted by the orders, with variations such as the circumstances of particular localities and railways may appear to require. They are printed here together so that public authorities may readily consult them when considering what provisions for safety are essential within their areas.

THE HIGHWAY (RAILWAY CROSSINGS) ACT, 1839.

(2 & 3 VICT. CAP. 45.)

An Act to amend an Act of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth relating to Highways.

Sect. 1.

Wherever a railroad crosses or shall hereafter cross any turnpike road or any highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or if in Scotland to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty session or court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pounds, together with such costs as to the justices or sheriff depute aforesaid before whom the conviction shall take place shall seem fit.

Proprietor of railroad to maintain gates where any railroad crosses the highway, &c.

Penalty 5l. for each day's neglect.

This Act is amended by 5 & 6 Vict. c. 55, s. 9, which requires the gates to be kept shut in general across the road. See *post*, p. 243.

Sect. 1. In the Highway Act, 1835, of which this Act is an amendment, the word "highways" is to be understood to mean "all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements."

This definition is also to be read subject to the common law definition, namely, that the way must be public—that is, open to all the subjects of the Crown.

Turnpikes are now practically extinct.

How penalties shall be recovered and applied.

2. The penalties by this Act imposed, and the costs to be allowed and ordered by the authority of this Act, shall in England be recovered and applied in the same manner as any penalties and costs under the said Act, and in Scotland shall be recovered and applied to the maintenance of the statute labour roads within the district where the offence is committed.

THE RAILWAY REGULATION ACT, 1842.

(5 & 6 VICT. CAP. 55.)

An Act for the better Regulation of Railways and for the Conveyance of Troops.

Notice of intended opening of railway.

4. No railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the Committee of Her Majesty's Privy Council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection.

If railway opened without notice, company to forfeit 20l.

5. If any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to Her Majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of Her Majesty's Courts of Record, or in the court of session or in any of the sheriffs' courts in Scotland.

The penalty is now recoverable also in the county court. See *Apothecaries Company v. Burt*, 5 Ex. 363.

Board of Trade empowered to postpone the opening.

6. If the officer or officers appointed by the lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the lords of the said committee that in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together

with the grounds of such opinion, it shall be lawful for the lords of the said committee, and so from time to time, as often as such officers shall after further inspection thereof so report, to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the lords of the said committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the lords of the said committee, the company to whom such railway shall belong shall forfeit to Her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of Her Majesty's Courts of Record, or in the court of session or in any of the sheriffs' courts in Scotland: Provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

Sect. 6.

See also 34 & 35 Vict. c. 78, s. 5, *post*, p. 247, and 36 & 37 Vict. c. 76, s. 6, *post*, p. 247.

9. And whereas by an Act passed in the second and third years of Her present Majesty, and intituled An Act to amend an Act of the fifth and sixth years of His late Majesty King William the Fourth relating to highways,^(a) it was enacted, that whenever a railway crosses or shall hereafter cross any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway: And whereas by the Acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road: And whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway: Be it therefore enacted, that, notwithstanding anything to the contrary contained in any Act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway; and such gates shall be of such dimensions and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed: Provided always, that it shall be lawful for the lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any

Gates at level crossings to be kept closed across the road.
2 & 3 Vict. c. 45.

Proviso.

Sect. 9. such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road ; and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed, in the manner directed by the lords of the said committee.

(a) *Ante*, p. 241.

Railway companies to erect and maintain fences.

10. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways : Be it enacted, that all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue of the provisions to that effect in the Acts of Parliament relating to such railways respectively.

Section 68 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 119, contains provisions as to fencing the land taken from the adjoining lands not taken.

THE RAILWAY REGULATION (GAUGE) ACT, 1846.

(9 & 10 VICT. CAP. 57.)

An Act for regulating the Gauge of Railways.

On what gauge railways shall be made.

It shall not be lawful (except as hereinafter excepted) to construct any railway for the conveyance of passengers on any gauge other than four feet eight inches and half an inch in Great Britain, and five feet three inches in Ireland : Provided always, that nothing hereinbefore contained shall be deemed to forbid the maintenance and repair of any railway constructed before the passing of this Act on any gauge other than those hereinbefore specified, or to forbid the laying of new rails on the same gauge on which such railway is constructed within the limits of deviation authorised by the several Acts under the authority of which such railways are severally constructed.

Sections 2, 3, and 5 contained provisions affecting special lines. Sections 3 and 5 have been repealed.

Gauge not to be altered.

4. It shall not be lawful after the passing of this Act to alter the gauge of any railway used for the conveyance of passengers.

Penalty on company for constructing railways contrary to this Act.

6. If any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this Act, the company authorised to construct the railway, or, in the case of any demise or lease of such railway, the company for the time being having the control of the works of such railway, shall forfeit ten

pounds for every mile of such railway which shall be so unlawfully constructed or altered, during every day that the same shall continue so unlawfully constructed or altered; and in estimating the amount of any such penalty any distance less than one mile shall be estimated as a mile. **Sect. 6.**

7. Over and above the penalty hereinbefore provided, if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this Act, it shall be lawful for the Commissioners of Her Majesty's woods, forests, land revenues, works, and buildings, or for the lords of the committee of Her Majesty's Privy Council for trade and foreign plantations, to abate and remove the same or any part thereof so constructed or altered contrary to the provisions of this Act, and to restore the site thereof to its former condition. Railways constructed contrary to this Act may be abated.

8. All penalties under this Act may be recovered from the company liable to pay and make good the same, as, under the provisions of an Act passed in the last session of Parliament, intituled An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of railways, a penalty for any infringement of the last recited Act is recoverable against a company authorised to construct a railway. Recovery of penalties. 8 & 9 Vict. c. 20.

THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 VICT. CAP. 119.)

An Act to amend the Law relating to Railways.

19. Where proceedings are taken against a company using a locomotive steam engine on a railway on account of the same not consuming its own smoke, then if it appears to the justices before whom the complaint is heard that the engine is constructed on the principle of consuming its own smoke, but that it failed to consume its own smoke, as far as practicable, at the time charged in the complaint through the default of the company, or of any servant in the employment of the company, such company shall be deemed guilty of an offence under the Railways Clauses Consolidation Act, 1845, section one hundred and fourteen.(a) Proceedings in case of non-consumption of smoke.

(a) See *ante*, p. 132.

20. All railway companies, except the Metropolitan Railway Company, shall, from and after the first day of October next, in every passenger train where there are more carriages than one of each class, provide smoking compartments for each class of passengers, unless exempted by the Board of Trade. Smoking compartments for all classes.

III.—*Provisions for Safety of Passengers.*

22. After the first day of April, one thousand eight hundred and sixty-nine, every company shall provide, and maintain in good working order, in every train worked by it which carries passengers, and Communication between passengers

Sect. 22. travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may approve. If any company makes default in complying with this section it shall be liable to a penalty not exceeding ten pounds for each case of default. Any passenger who makes use of the said means of communication without reasonable and sufficient cause shall be liable for each offence to a penalty not exceeding five pounds.

and the
company's
servants.

PART V.—*Light Railways.*

27. The Board of Trade may by licence authorise a company applying for it to construct and work or to work as a light railway, the whole or any part of a railway which the company has power to construct or work.

Order for
construction
and
working of
railway as a
light
railway.

Before granting the licence the Board of Trade shall cause due notice of the application to be given, and shall consider all objections and representations received by them, and shall make such inquiry as they think necessary.

See the similar power contained in section 18 of the Light Railways Act, *ante*, p. 75.

Conditions
and regula-
tions for
light
railway.

28. A light railway shall be constructed and worked subject to such conditions and regulations as the Board of Trade may from time to time impose or make: Provided, that (1) the regulations respecting the weight of locomotive engines, carriages, and vehicles to be used on such railway shall not authorise a greater weight than eight tons to be brought upon the rails by any one pair of wheels; (2) the regulations respecting the speed of trains shall not authorise a rate of speed exceeding at any time twenty-five miles an hour.

If the company or any person fails to comply with or acts in contravention of such conditions and regulations, or directs any one so to fail or act, such company and person shall respectively be liable to a penalty for each offence not exceeding twenty pounds, and to a like penalty for every day during which the offence continues; and every such person on conviction on indictment for any offence relating to the weight of engines, carriages, or vehicles, or the speed of trains, shall be also liable to imprisonment, with or without hard labour, for any term not exceeding two years.

Publication
of regula-
tions.

29. The conditions and regulations of the Board of Trade relating to light railways shall be published and kept published by the company in manner directed with respect to bye-laws by section one hundred and ten of "The Railways Clauses Consolidation Act, 1845," (a) and the company shall be liable to a penalty not exceeding five pounds for every day during which such conditions and regulations are not so published.

(a) *Ante*, p. 131.

THE REGULATION OF RAILWAYS ACT, 1871.

(34 & 35 VICT. CAP. 78.)

An Act to amend the Law respecting the Inspection and Regulation of Railways.

Sect. 5.

5. The provisions of the Regulation of Railways Act, 1842, and the Acts amending the same, with respect to the opening of any railway, shall extend to the opening of any additional line of railway, deviation line, station, junction, or crossing on the level which forms a portion of or is directly connected with a railway on which passengers are conveyed, and has been constructed subsequently to the inspection of such railway on behalf of the Board of Trade previous to the original opening of such railway: Provided always, that the Board of Trade may, with respect to any of the works in this section mentioned, from time to time upon the application of any railway company dispense with any notice which, under the provisions of the said Acts, is required to be given to the Board of Trade previous to opening any railway.

Extension
of 5 & 6
Vict. c. 55,
ss. 4—6, to
new works
(ante, p. 242).

See 36 & 37 Vict. c. 76, s. 6, *post*.

THE RAILWAY REGULATION (RETURNS) ACT, 1873.

(36 & 37 VICT. CAP. 76.)

An Act to make further Provision for the Regulation of Railways.

4. Every railway company shall, on or before the fifteenth day of February in every year, make a full and true return to the Board of Trade of the matters and in the forms specified in the first and second schedules annexed to this Act, and the notes annexed to such schedules shall be deemed to be part of this Act in the same manner as if they were enactments contained in the body thereof.

Returns to
be made to
the Board
of Trade by
railway
companies.

If any railway company makes default in making any return required by this Act, it shall incur a penalty not exceeding five pounds for every day during which such default continues, such penalty to be recovered in manner provided by the Summary Jurisdiction Acts, upon the complaint of any officer of the Board of Trade: Provided that the Board of Trade may in any case dispense with such return or any part thereof where they deem the same inapplicable.

These schedules deal with numerous matters, such as signals, crossings, and method of working.

6. Where any inspecting officer of the Board of Trade has reported to that Board, in pursuance of the sixth section of the Railway Regulation Act, 1842, that the opening of any railway or portion of a railway would in his opinion be attended with danger to the public using the same by reason of the incompleteness of the works

Amendment
of section 6
of the
Railway
Regulation
Act, 1842
(ante, p. 242).

Sect. 6. or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, and the Board of Trade have postponed the opening of such railway or portion of a railway in pursuance of such section for the period of one calendar month, it shall be lawful for the said Board, if it thinks fit, unless in the meantime it is stated by the company to whom such railway belongs that all requisitions made by such inspecting officer upon his inspection of such railway or portion of a railway as being necessary for the safety of the public have been complied with, to direct the postponement of the opening of such railway or portion of a railway for a further period not exceeding one month without going to the expense of directing a further inspection to be made by the officer, and so on from time to time until the requisitions made by such officer have been complied with, or the said Board is otherwise satisfied that such railway or portion of a railway can be opened with safety to the public.

**THE RAILWAY RETURNS (CONTINUOUS BRAKES) ACT,
1878.**

(41 & 42 VICT. CAP. 20.)

An Act to provide for returns respecting Continuous Brakes in use on Passenger Trains on Railways.

Short title. 1. This Act may be cited as the Railway Returns (Continuous Brakes) Act, 1878.

Returns to be made twice a year by railway companies to Board of Trade respecting continuous brakes. 2. Every railway company shall twice in every year make to the Board of Trade returns respecting the use of continuous brakes on the passenger trains running on the railways worked by such company.

The returns shall contain the particulars and be in the form specified in the schedule to this Act, or shall contain such other particulars and be in such other form as the Board of Trade from time to time prescribe: and the Board of Trade may in any case dispense with any part of the returns where they deem the same inapplicable.

The returns shall be made for the six months ending on the last day of December and the last day of June in every year, or on such other days as the Board of Trade from time to time direct, and shall be made within fourteen days after the expiration of each six months.

Every return shall be signed by the officer of the company responsible for the correctness of the return, and by the chairman or deputy chairman of the directors of the company, or where there are no directors by the individual or one of the individuals bound to make the return.

Any railway company who fail to comply with this section shall be liable on summary conviction before a court of summary jurisdiction to a fine not exceeding five pounds for every day during which the default continues.

Any person who makes or is privy to the making of a return under this Act which is to his knowledge false in any particular, shall be liable on summary conviction before a court of summary jurisdiction to a fine not exceeding fifty pounds. Sect. 2.

Expressions in this Act have the same meaning as they have in the Regulation of Railways Act, 1871. 34 & 35
Vict. c. 78.

THE CHEAP TRAINS ACT, 1883.

(46 & 47 VICT. CAP. 34.)

An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the Conveyance of the Queen's Forces by Railway.

3. (1.) If at any time the Board of Trade have reason to believe—
- (a.) That upon any railway or part of a railway, or upon any line or system of railways, whether belonging to one company or to two or more companies, which forms a continuous means of communication, a due and sufficient proportion of the accommodation provided by such company or companies is not provided for passengers at fares not exceeding the rate of one penny a mile ; or
- (b.) That upon any railway carrying passengers proper and sufficient workmen's trains are not provided for workmen going to and returning from their work at such fares and at such times between six o'clock in the evening and eight o'clock in the morning as appear to the Board of Trade to be reasonable,

Provision for proper third-class accommodation and workmen's trains.

then and in either case the Board of Trade may make such inquiry as they think necessary, or may, if required by the company or any of the companies concerned, refer the matter for the decision of the Railway Commissioners, who shall have the same power therein as if it had been referred to their decision in pursuance of the Regulation of Railways Act, 1873.

The company, when this Act applies, may in general, by contract on a special ticket at lower rates, limit or exclude their liability for damages for personal injury, but in the case of an infant passenger such a contract is not valid. *Hall v. North Eastern Railway Company*, L. R. 10 Q. B. 437 ; *Flower v. London and North Western Railway Company* [1894], 2 Q. B. 65.

(2.) If on an inquiry under this Act it is proved to the satisfaction of the Board of Trade or the Railway Commissioners, as the case may be, that such proper and sufficient accommodation or workmen's trains as aforesaid are not provided by any railway company, the Board of Trade or the Railway Commissioners, as the case may be, may order the company to provide such accommodation or workmen's trains at such fares as, having regard to the circumstances, may appear to the said Board or the Commissioners to be reasonable.

Sect. 3.

(3.) If any company on whom an order is made under this Act to provide proper and sufficient accommodation or workmen's trains refuse, or at any time after the expiration of one month from the making thereof, neglect to comply with the order, the Board of Trade shall issue a certificate to that effect to the Commissioners of Inland Revenue, and after the date of such certificate the company shall lose the benefit of this Act and be liable to pay in respect of the fares received after such date the same amount of passenger duty as would be payable if the passenger duty had not been varied as provided by this Act, and shall continue so liable in respect of all fares received up to the date at which the Board of Trade certify that the company has complied with the said order. Where two or more companies are concerned, the certificate shall state whether both or all, or one or more, and which of them is in default.

(4.) A company on whom an order is made by the Board of Trade under this section may within six months after the making of the order appeal to the Railway Commissioners, who shall have the same power in the matter as if it had been originally referred to their decision.

(5.) The Board of Trade or the Railway Commissioners, as the case may be, may rescind or vary any order made by them under this section.

THE REGULATION OF RAILWAYS ACT, 1889.

(52 & 53 VICT. CAP. 57.)

An Act to amend the Regulation of Railways Acts; and for other purposes.

Power to order certain provisions to be made for public safety.

1. (1.) The Board of Trade may from time to time order a railway company to do, within a time limited by the order, and subject to any exceptions or modifications allowed by the order, any of the following things :

- (a.) To adopt the block system on all or any of their railways open for the public conveyance of passengers ;
- (b.) To provide for the interlocking of points and signals on or in connexion with all or any of such railways ;
- (c.) To provide for and use on all their trains carrying passengers continuous brakes, complying with the following requirements, namely :
 - (i.) The brake must be instantaneous in action, and capable of being applied by the engine-driver and guards ;
 - (ii.) The brake must be self-applying in the event of any failure in the continuity of its action ;
 - (iii.) The brake must be capable of being applied to every vehicle of the train, whether carrying passengers or not ;
 - (iv.) The brake must be in regular use in daily working ;
 - (v.) The materials of the brake must be of a durable character, and easily maintained and kept in order.

In making any order under this section the Board of Trade shall have regard to the nature and extent of the traffic on the railway, and shall, before making any such order, hear any company or person whom the Board of Trade may consider entitled to be heard. **Sect. 1.**

2. If default is made in compliance with any order made by the Board of Trade in pursuance of the last foregoing section, the Railway and Canal Commission may, on the application of the Board of Trade, enjoin obedience to the order, and thereupon the order may be enforced as if it were made by the Commission for the purpose of carrying into effect any of the provisions of the Acts under which the Commission have jurisdiction. **Enforcement of orders of Board of Trade.**

3. Whenever any railway company shall be ordered by the Board of Trade to provide any appliances, or execute any works, or incur any expenditure under the provisions of this Act which would properly be chargeable to capital account, it shall be lawful for such company to furnish to the Board of Trade an estimate of the cost of providing such appliances, executing such works, and carrying out such order generally, and thereupon the Board of Trade shall, upon the application of the company, fix and determine the amount which would properly be capital expenditure, and the company may from time to time issue debentures or debenture stock in priority to or ranking *pari passu* with any existing debentures or debenture stock of such company bearing interest at a rate not exceeding five per cent. per annum to an amount not exceeding the sum so fixed and determined, and any money raised under the provisions of this section shall be applied in carrying out such requirements of the Board of Trade and to no other purpose whatsoever, and no other authority save the certificate of the Board of Trade shall be requisite to authorise and validate the issue of such debentures or debenture stock. **Issuing debenture stock to meet expenses incurred under this Act.**

4. (1.) Every railway company shall make to the Board of Trade periodical returns as to the persons in the employment of the company whose duty involves the safety of trains or passengers, and who are employed for more than such number of hours at a time as may be from time to time named by the Board of Trade. **Returns of overtime to Board of Trade.**

(2.) The returns shall be delivered at such intervals, and shall be in such form, and contain such particulars, as the Board of Trade from time to time direct.

(3.) The provisions of sections nine and ten of the Regulation of Railways Act, 1871, with respect to penalties, shall apply to returns under this section. **34 & 35 Vict. c. 78.**

It would seem probable, having regard to the course of legislation as indicated by the Railways Regulation Act, 1893, that this section will be applied, or applied with modifications, to light railways, by the orders authorising them.

5. (1.) Every passenger by a railway shall, on request by an officer or servant of a railway company, either produce, and if so requested deliver up, a ticket showing that his fare is paid, or pay his fare from the place whence he started, or give the officer or servant his name and address; and in case of default shall be liable on summary conviction to a fine not exceeding forty shillings. **Penalty for avoiding payment of fare.**

Sect. 5.

(2.) If a passenger having failed either to produce, or if requested to deliver up, a ticket showing that his fare is paid, or to pay his fare, refuses, on request by an officer or servant of a railway company, to give his name and address, any officer of the company or any constable may detain him until he can be conveniently brought before some justice or otherwise discharged by due course of law.

(3.) If any person—

(a.) Travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof; or

(b.) Having paid his fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or

(c.) Having failed to pay his fare, gives in reply to a request by an officer of a railway company a false name or address, he shall be liable on summary conviction to a fine not exceeding forty shillings, or, in the case of a second or subsequent offence, either to a fine not exceeding twenty pounds, or in the discretion of the court to imprisonment for a term not exceeding one month.

(4.) The liability of an offender to punishment under this section shall not prejudice the recovery of any fare payable by him.

Some intelligible provision seems needed to deal with cases of refusal to show the ticket, and cases of travelling without a ticket or beyond the journey covered by the ticket. It is suggested that to do any of these things without lawful excuse should be an offence, and that the burden of proving lawful excuse should be on the passenger. It is presumed that as the above enactment will not, without being expressly applied by the order, apply to light railways, the matter is intentionally left for the consideration of the Commissioners. See *Huffam v. North Staffordshire Railway Company* [1894], 2 Q. B. 821.

Passenger
ticket to
have fare
printed
thereon.

6. From and after a date to be fixed by order of the Board of Trade, and subject to such exceptions, if any, as may be allowed by such order, every passenger ticket issued by any railway company in the United Kingdom shall bear upon its face, printed or written in legible characters, the fare chargeable for the journey for which such ticket is issued, and any railway company issuing any passenger ticket in contravention of the provisions of this section shall be liable to a penalty not exceeding forty shillings for every ticket so issued, to be recovered on summary conviction.

Power to
make bye-
laws as to
stations.

7. The power conferred on a railway company by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation Act (Scotland), 1845, to make byelaws subject to disallowance by the Board of Trade, shall include power to make byelaws for maintaining order in, and regulating the use of, railway stations and the approaches thereto.

Short title.

8. (1.) This Act may be cited as the Regulation of Railways Act, 1889.

(2.) This Act and the Regulation of Railways Acts, 1840 to 1871, may be cited collectively as the Regulation of Railways Acts, 1840 to 1889.

ENACTMENTS MENTIONED, ETC.

The following enactments are mentioned in, or connected with, the Light Railways Act, 1896. They are printed in order of date :—

IMPROVEMENT OF LAND ACT, 1864.

(27 & 28 VICT. CAP. 114.)

For "the Commissioners" throughout this Act read the "Board of Agriculture : " The Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30).

Sect. 8.

8. The word "landowner" shall mean herein, as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary, or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the Commissioners, without regard to the real amount of the interest of any person so excepted ; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such lands ; and as to lands in Scotland, the word "landowner" shall denote and include every fiar, liferenter, or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases, or tenancies of the tenants in the actual possession thereof ; and as to lands in Ireland, the word "landowner" shall mean such person as under the Act passed in the first and second years of the reign of Her present Majesty, intituled an Act to abolish Compositions for Tithes in Ireland and to substitute rentcharges in lieu thereof, shall have the first estate of inheritance, or other estate or interest equivalent to a perpetual estate or interest therein, and also any tenant in dower or by the courtesy, or any person having under the limitations of any settlement by deed, will, Act of Parliament, or otherwise any estate for life, or other particular estate thereby created or limited out of or in any estate of inheritance, or by, out of, or in any such estate or interest as by or under the last-mentioned Act is to be deemed equivalent to a perpetual estate or interest : and as to lands in any part of the United Kingdom, the word "landowner" shall include a corporation, and also such persons as are empowered by the twenty-third section hereof.

Interpretation of "landowner."

1 & 2 Vict. c. 109.

See Light Railways Act, 1896, s. 19 (2), *ante*, p. 75.

Sect. 9.

Interpreta-
tion of
"improve-
ment of
land."

9. By the "improvement of land" shall herein be meant all or any of the following matters :

- (6.) The making of permanent farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate.
- (11.) The construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep, and other agricultural stock and produce, and of lime, manure, and other articles and things for agricultural purposes ; provided that the Commissioners shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof.
- (12.) The execution of all such works as in the judgment of the Commissioners may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.

See also sections 25 and 30 of the Settled Land Act, 1882, which extend these improvements.

Interpreta-
tion of
"person."

10. The word "person" shall in this Act include companies and all other corporations.

And with regard to the proceedings preliminary to the sanction of any improvements, be it enacted as follows :—

Application
to Commis-
sioners to
sanction
improve-
ments.

11. When any landowner shall be desirous of borrowing or advancing money under this Act for the improvement of his land, he shall make an application to the Commissioners to sanction the proposed improvements in such manner and form, and stating such particulars as the Commissioners shall from time to time direct ; and until the proposed improvements shall have been sanctioned by the Commissioners in manner hereinafter mentioned, the application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as hereinafter mentioned for the expenses incurred by the Commissioners or their officers in consequence of his application.

Joint appli-
cation by
several
landowners.

12. Any two or more landowners may, with the consent of the Commissioners, join in an application to them to sanction the improvement of the lands of such landowners respectively, but the sum to be charged in pursuance of any such joint application shall be apportioned so that a separate and distinct sum may become charged on the land of each landowner.

Commis-
sioners may
issue forms ;

13. The Commissioners may from time to time frame and circulate, as they shall see occasion, forms indicating the particulars of the information to be furnished to them by landowners for the purposes of this Act, and such other forms as the Commissioners may deem expedient for facilitating any proceedings under this Act.

require
security for
expenses ;

14. The Commissioners may require security to be given to them by the landowner, by bond, deposit, or otherwise, in such form as

they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as hereinafter mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works: but unless the Commissioners shall issue such absolute order as hereinafter mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the Commissioners, and shall be recoverable by them as in the nature of a Crown debt. Sect. 14.

15. If the Commissioners shall think fit to entertain the application so made to them, they may cause the land to be inspected and examined by an assistant Commissioner, or an engineer or surveyor, who shall have regard to and examine the proposals and statements contained in such application, and shall report his opinion thereon, and who shall also report whether in his judgment the proposed improvements will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for; and the Commissioners may by themselves or any assistant Commissioner, engineer, or surveyor, make such other inquiries in relation to any such application as they shall think fit: provided that the above requisition as to increased annual value shall not apply to any outlay proposed to be made upon or in respect of planting only. cause of application to be investigated;

16. The Commissioners shall have power to require such alterations as they shall think expedient to be made in the improvements proposed, or in the proposed mode of executing them. and require proposed improvements to be modified.

Sections 17 and 18 have been repealed by the Settled Land Act, 1882.

19. If the Commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any Commissioners, trustees, conservators, undertakers, company, or other body or individuals, or the banks or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such Commissioners, trustees, conservators, undertakers, company, or other body, or individuals; and in case they shall, within one month after the receipt of such notice, signify in writing to the Commissioners their dissent from such application, and state the nature of their interests in or authority over such river or canal, the Commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the improvement unless or until such dissent be withdrawn, or on order made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorising the Commissioners to sanction the improvement. The same in case of navigable rivers and canals.

Sect. 20. 20. When the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the Commissioners shall not sanction any improvement of such land, or of so much thereof as is so held, unless and until the patron of the benefice, and in England and Ireland the bishop of the diocese, and in Scotland the presbytery of the bounds, shall signify to the Commissioners, by writing under their hands, their respective consents to such application.

Consents
necessary in
case of
church
lands.

Under the Improvement of Land (Ecclesiastical Benefices) Act, 1884, the consent of both bishop and patron is required.

In case of
dissent,
or when
landowner's
infant
children
are to be
protected,
Court of
Chancery
or session
may autho-
rize Com-
missioners
to proceed.

21. If and when any dissent from any such application to the Commissioners for their sanction of proposed improvements shall have been notified in writing to the Commissioners or by the Commissioners, trustees, company, or other body or individuals interested in any river or canal which would or might be interfered with as hereinbefore mentioned the landowner desiring such improvements may apply to the High Court of Chancery in England or Ireland where such lands are situate in England or Ireland respectively, or to the court of session where such lands are situate in Scotland, for an order of such court authorizing the Commissioners to entertain and proceed upon the application for such proposed improvements notwithstanding such dissent or circumstance ; and such application shall be made, as to lands in England, to any one of the vice-chancellors sitting at chambers, by summons, calling on the party dissenting to show cause why such order should not be made ; as to lands in Ireland, to the Master of the Rolls, by summary petition or otherwise, as he shall by any general order direct ; and as to lands in Scotland, to either division of the court of session in time of session, or to the lord ordinary sitting on bills in time of vacation, by summary petition ; and the court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such court or judge may consider necessary or desirable, or as may be produced before them or him ; and if upon a consideration of all the circumstances such court or judge shall be of opinion that the Commissioners should entertain and proceed upon such application, an order shall be made authorising and requiring them to proceed thereon, and to deal with the same according to the provisions of this Act authorising them in that behalf, notwithstanding such dissent as aforesaid : Provided that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application, or to obtain such order.

Words omitted were repealed by the Settled Land Act, 1882.

Service of
notice under
preceding
clause.

22. Where any party dissenting shall be out of the jurisdiction of the court, it shall be lawful for the court or judge to order service to be made in such manner as such court or judge may think fit, and upon proof to the satisfaction of such court or judge that such party

has had actual notice within a reasonable time of such intended application, it shall be lawful for such court or judge thereupon to hear and determine such application. **Sect. 22.**

23. The costs of and incidental to every application under the twenty-first and twenty-second sections, and the mode in which such costs shall be settled or taxed, shall be in the discretion of the court or judge who shall hear such application, and if such court or judge shall so direct, the said costs shall be deemed to be part of the expenses of and incidental to the application for the proposed improvements. And costs may be given by the court.

24. All husbands, guardians, tutors, committees, curators, feoffees, trustees, judicial factors, executors, and administrators shall respectively have the same rights and powers of making applications and signifying dissents, and taking other proceedings under this Act, as their respective wives, infants, minors, lunatics, idiots, and furious or fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors, or administrators respectively would have had if the estates, charges, or interests of which they shall be such feoffees, trustees, or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, tutor, committee, curator, feoffee, trustee, judicial factor, executor, or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof. Representation of persons under disability for applications and dissents under preceding clauses.

And with regard to the sanction of any improvements and the rights arising thereunder, be it enacted as follows:—

25. If the Commissioners shall find that the proposed improvements or any part thereof, whether with or without any alterations by them required or sanctioned, would effect a permanent increase of the yearly value of the lands proposed to be improved or of any part thereof exceeding the yearly amount proposed to be charged thereon, they shall sanction such improvements, or such part thereof as they shall think expedient, if under the preceding sections it shall be lawful for them so to do, by an order under their hands and seal; and they shall by the same order fix the rate of interest to be allowed on the cost of the sanctioned improvements, having regard to the market value of money at the time, but such interest shall never exceed five per cent. per annum. Commissioners' orders sanctioning improvements.

26. The Commissioners shall from time to time prepare forms of orders for sanctioning improvements, and shall also, whenever required by the landowner so to do, frame and entitle their said orders under this Act in such manner that they may also be and operate as provisional, sanctioning, or other corresponding orders under the respective acts applying to any company with which he may have contracted relating to the loan or improvements in question: Provided that every order operating under this Act to sanction any improvements shall name the landowners to whom it is issued; Forms of orders sanctioning improvements to be prepared by Commissioners; what they must contain.

Sect. 26. shall express the greatest sum to be charged in addition to any costs, charges, and expenses under the fiftieth section hereof, and the rate of interest and term of years for the repayment thereof, the former not exceeding five per centum per annum, and the latter not exceeding twenty-five years; shall specify the lands on which such re-payment is to be charged; and shall either express or refer to some contract or other document expressing the general scheme of the improvements to be executed.

They may be called provisional orders, and may be assigned to parties agreeing to execute improvements.

27. Every order operating under this Act alone to sanction any improvement may be in the form set forth in Schedule (A.) hereto,^(a) and shall be called a provisional order, and shall, subject to the following section hereof, create in favour of the landowner named therein the title to an absolute charge on the completion of the sanctioned improvements, which title such landowner may assign, either absolutely or by way of security, to any person; and such assignment may be made by endorsement on the provisional order.

(a) *Post*, p. 265.

28. In case of the death of the landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements sanctioned thereby the right to complete such improvements, and to assign the title to an absolute charge, shall pass to the succeeding landowner; but if the succeeding landowner shall not within three calendar months after his succession proceed with the works, so as to complete the same in conformity with the provisional order, the preceding landowner, or in case of his decease, his executors or administrators may complete such improvements, and shall become entitled to have the absolute charge executed to him or them. If the succeeding landowner shall complete the improvements there shall be distinct absolute charges executed to such landowner, and the preceding landowner or his personal representatives, for the outlay made by the preceding and succeeding landowners respectively, and in case of difference the Commissioners shall determine the proportions; provided that the succeeding landowner may, with the sanction of the Inclosure Commissioners, and after notice to the parties to whom notice was originally given, or such of them as may be living, and such other persons, if any, as the Commissioners may direct, terminate the proceedings under the provisional order on payment of the outlay and expenses made thereunder, and indemnifying the person to whom the title to the absolute charge may have been assigned. Notwithstanding the foregoing provisions, if the title to an absolute charge shall have been assigned by the preceding landowner, the assignee may complete the improvements if he shall proceed therewith within one calendar month from the time the preceding landowner ceased to be such landowner.

Provisional orders may be modified.

29. The Commissioners may from time to time, on application to be made by the landowner, and after such inquiry as they shall think fit, sanction any modification or alterations either of the scheme of the improvements or of any other matter expressed or referred to in the provisional order: Provided that no such modification or alteration shall increase the sum to be charged in respect of the improvement, or extend or curtail the term of repayment beyond

the greatest amount which it was proposed so to charge, or the greatest or least term over which it was proposed that the rentcharge should be spread, as respectively stated in the advertisement and notices hereinbefore required: Provided also, that every such modification or alteration shall require the consent of every party who, by having contracted for the execution of the improvements, or by having taken an assignment of the title to an absolute charge or otherwise, may be interested therein; and the modification order shall be in such form as the Commissioners shall from time to time appoint, and shall be construed together with the original order as one order with respect to all rights arising thereunder after the date of the modifying order. Sect. 29.

And with regard to the execution of any improvements, be it enacted as follows:

30. Before the commencement of any improvements sanctioned in manner aforesaid the landowner shall deliver to the Commissioners a detailed specification thereof, and in the case of buildings, and also in any other case where the same shall be required by the Commissioners, a detailed plan or drawing: Provided that when it is not intended to complete the improvements within one year from the date of the provisional or other sanctioning order, the specification and plan or drawing first delivered may comprise so much only as it is intended to complete within one year from the said date, so, however, that for the works of each successive year such specification and plan or drawing as aforesaid be always delivered in advance. Detailed specifications to be delivered in advance;

31. The specifications and plans of drawings aforesaid shall be examined and, if necessary, the spot visited by an Assistant Commissioner, or an engineer or surveyor, who shall report whether in his judgment the improvements as proposed to be effected will be effected in a substantial and durable manner, and, in the case of farm buildings, whether the same, or the improvements thereof or additions thereto, will be suitable to the locality; and no improvement shall be commenced or proceeded with until the specifications and plans or drawings aforesaid shall have been approved by the Commissioners; but nothing herein contained shall render necessary the re-delivery, re-examination, or re-approval of any detailed specifications, plans, or drawings which may have been delivered in connexion with the application for the Commissioners' sanction to the general scheme of the improvements, and may have been approved in connexion with that sanction. and approved before execution of works.

32. All persons interested in any lands adjoining or near to the land improved or proposed to be improved, and being, as to lands in England or Ireland by the provisions of "The Lands Clauses Consolidation Act, 1845," and as to lands in Scotland by the provisions of "The Lands Clauses Consolidation (Scotland) Act, 1845," enabled to sell and dispose of such lands so adjoining or near, or any estate or interest therein, may, for the purpose of any improvements authorised by this Act, sell and convey or grant to the landowner whose land has been or is proposed to be improved such lands so adjoining or near, or any part thereof, or any easement, authority, or right in, through, over, or affecting the same, and any such land, easement, authority, or right so sold and conveyed or granted shall thereupon Adjoining lands, or easements over them, may be sold for purpose of improvements, and conveniences over adjoining lands for the execution of improvements contracted for.

Sect. 32. become appurtenant to or pertinent of the lands improved or proposed so to be, and with reference to the improvements whereof the same was purchased, and shall be held upon and subject to the same uses, trusts, charges, and incidents; and all such persons as aforesaid may also make any agreement with the landowner, or with any person or company that shall have contracted for the actual execution of the improvements, or their respective agents, with reference to entering on, cutting through or into, or prejudicially affecting such lands so adjoining or near; and every such sale, conveyance, grant, and agreement shall be valid and effectual accordingly, and the price or consideration shall be settled by two surveyors or a surveyor to be appointed by them in manner provided by the ninth section of the "The Lands Clauses Consolidation Act, 1845," or, as the case may be, by the ninth section of "The Lands Clauses Consolidation (Scotland) Act, 1845," and shall be deposited as directed by the same respective sections, and thenceforth become subject to the provisions of the same respective Acts.

Provisional order to protect from impeachment of waste, and to authorise getting materials from land, &c.

34. Every provisional or modifying order shall be full authority to the landowner or successive landowners and their representatives in the respective cases hereinbefore defined, and to all persons employed by or under contract with him or them respectively, to enter upon lands to be improved, and any adjoining or neighbouring lands acquired or authorized to be entered under either of the two last preceding sections, and to execute in and on the same, without impeachment of waste by any remainderman or reversioner, all the improvements sanctioned by the same order according to the specifications, plans, or drawings approved by the Commissioners, and to do, execute, and use all such acts, works, and conveniences as may be proper for making, maintaining, and using such improvements; and for the purpose of effecting any improvement under this or the recited Acts, it shall be lawful to get and work freestone, limestone, clay, sand, and any other mineral or substance out of the land to be improved or charged, and to make tramroads and other ways, and to burn and make bricks, tiles, and other things, to be used in effecting such improvements, and also for the same purpose to cut down and use any timber and trees not planted or serving for shelter or ornament.

Sections 35—48 contain clauses for the protection of various rights.

Charges for improvements.

And with regard to charges for improvements under this Act, be it enacted as follows:—

Commissioners to execute, charge on completion of works, or of some part thereof.

49. When the Commissioners are satisfied that the improvements sanctioned by them, or some part thereof, shall have been properly executed, either according to the specifications and plans or drawings approved of by them, or with such deviations therefrom as in their judgment will not diminish the permanent benefit accruing from such improvements, to the lands wherein they have been made, they shall execute a charge under their hands and seal upon the inheritance or fee of the lands comprised in the provisional or other sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements, if all the said improvements have been completed, or for a

proportional part of such sum if a part only of the said improvements has been executed, together, in either case, with the interest by the same order expressed, and with the amount (if any) which shall have been paid in respect of the purchase of the adjoining lands or of any easement, authority, or right in, through, over, or affecting adjoining lands, with interest thereon at the like rate. Sect. 49.

50. If the landowner is desirous that the inheritance or fee of the lands improved should be charged with the expenses of and incident to his application to the Commissioners, or his contract with any company or person relating to the execution of the improvements, or to the advance of money for their execution, the Commissioners may ascertain the amount of the costs, charges, and expenses properly incurred preparatory or in relation to and consequent on such contract, and the application to the Commissioners or either of them, and may include in the principal money charged on the inheritance or fee of such lands the amount of such costs, charges, and expenses, and of the settled or taxed costs, if any, which a court or judge shall have ordered as aforesaid to be deemed and taken to be part of the expenses of and incident to the application for improvements, or such part thereof as the Commissioners think fit; and the Commissioners may also include in such principal money interest at a rate not exceeding five pounds per centum per annum on all payments forming part of the same principal money from the respective dates of such payments to that of the absolute order, but so that no interest shall be allowed on any such payment for more than six years; provided that the total amount of the principal money to be charged on the lands improved under the provisions of this Act shall not in any case exceed that to which, in the opinion of the Commissioners, the inheritance or fee of the lands improved will be durably benefited by the improvements. Expenses of application and certain contracts may be included in charge.

51. Every charge under this Act shall be created by way of rentcharge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof to be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the Commissioners; and the payment for each half-year shall be, and be expressed to be, as to part thereof a repayment of a certain amount of principal money, and as to the remainder thereof a payment of interest; and the charge shall be duly stamped for denoting payment of the proper *ad valorem* stamp duty which would be payable on a mortgage for securing the like amount as the principal money thereby charged, and shall be called an absolute order; and a copy of every such absolute order shall be authenticated by the seal of the Commissioners, and shall be kept by them; and such copy, and any copy thereof authenticated by their seal, shall be evidence of the contents and purport of the same absolute order. The charges to be by way of rent-charge created by absolute order;

52. Charges under this Act shall be made according to the form in the Schedule (B.) hereto annexed, or as near thereto as the circumstances of the case will admit. and may be made according to form in schedule (B).

And with regard to charging lands with money subscribed for the construction of railways, be it enacted as follows :

Sect. 78. 78. In case any landowner shall be desirous of subscribing for any shares or stock in the capital, whether original or additional, of a company having power to construct a railway or navigable canal, or any branch or extension railway or navigable canal, or any deviation of a line of railway or a navigable canal already sanctioned, the works for which such subscription is to be made being unfinished, or in any additional capital to be raised for the completion of any such railway, canal, branch, extension, or deviation, the same being upon or near to and which will improve or benefit the lands of such landowner, and who shall be desirous that such amount, or any part thereof, may be charged upon the lands so to be improved, it shall be lawful for him to apply to the Commissioners for that purpose within the time limited by the railway or canal company's Act or Acts for the construction of the works in question.

Conditions for application to Commissioners.

The application of these sections are extended by section 19 (2) of the Light Railways Act, *ante*, p. 75.

79. If the Commissioners shall think fit to entertain such application, they shall cause all such inquiries to be made, and take all such other steps, as shall seem to them expedient for obtaining information as to the circumstances; and all the provisions of the thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fifth, and fifty-first sections of this Act shall apply to the case as though an improvement were to be made of the lands proposed to be charged.

Commissioners proceedings on application.

Provisional order sanctioning charge.

80. If the Commissioners shall be satisfied that the railway or canal, when constructed and open for traffic, will effect a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon, they shall execute and deliver to the landowner a provisional order, under their seal and the hands of two of them, expressing their sanction of the charge proposed; and such order shall be made as near to the form set forth in the Schedule (A.) to this Act as the circumstances will permit, and shall, with the right to a charge thereby created, be assignable by endorsement, either absolutely or by way of security, to any company or person that may agree to advance, by paying the same to the railway or canal company, the amount authorized to be charged, and notice of such assignment shall be given to the Commissioners, and shall be registered by them.

Companies empowered to lend.

81. Every company empowered by Act of Parliament to lend money for the improvement of land is hereby empowered to advance, by paying the same to the railway or canal company, any money authorized to be charged in manner aforesaid.

Commissioners absolute order and its conditions.

82. When the railway or canal shall have been completed and opened throughout for public traffic, and as many shares in the capital of the railway or canal company subscribed for or held as aforesaid by the landowner as shall be equal in nominal amount to the money authorized to be charged shall have been fully paid up, and the certificates for such shares shall have been deposited by the landowner with the Commissioners, the Commissioners shall, by an

absolute order under their hands and seal, execute to the landowner or his assignees a charge upon the inheritance or fee of the lands in question of the amount authorized as aforesaid to be charged, and may, if the landowner shall so desire, include, with the principal money so charged, the costs, charges, and expenses of the application and orders, and of any advance which may have been made to him of the amount authorized to be charged, and such settled or taxed costs and interest as mentioned in the fiftieth section hereof, subject nevertheless to the proviso in the same section contained.

Sect. 82.

83. Such absolute order shall be made in the form in the Schedule (B.) to this Act annexed, or as near thereto as the circumstances will permit, and all the provisions of this Act relating to absolute orders whether in respect of the form or effect of such charges or orders or otherwise, except only the provisions for the apportionment and release of such charges, shall apply to absolute orders under the last preceding section as far as the circumstances will permit.

Form and effect of absolute order.

84. The landowner shall forthwith give notice to the railway or canal company of the execution of such absolute order, and of the deposit of such certificates with the Commissioners, and thereupon the company shall make an entry or memorial in their register of shareholders with respect to such shares of the fact of such absolute orders having been executed.

Notice thereof to be entered in register of shareholders.

85. From the time of such notice, and during the whole term of the charge created by such absolute order, the person who for the time being shall be bound to make the periodical payments of such charge shall be entitled to the said shares, and if the same shall not at the time being be registered in his name, the person registered as the holder thereof shall, as between himself and the person so entitled, hold them in trust for such last-mentioned person.

Person liable to pay charge to be entitled for the time being to the shares.

86. The person so for the time being entitled may at any time require the person registered as the holder of the said shares, or his representatives, to transfer to him the said shares, and such transfer shall thereupon be made accordingly, but at the expense in all respects of the transferee; and upon the production of such transfer duly stamped, and of a certificate by the Commissioners under their hands and seal that the transferee is the person at the time being bound to make the periodical payments of the said charge, the railway or canal company shall register such transfer.

and to have them stand in his own name.

87. With the exception of such transfers as may from time to time be made for the purpose of transferring the shares to the person so for the time being entitled thereto, the said shares shall not under any circumstances be transferred or disposed of by the registered holder, whether he be the person for the time being entitled thereto or not, during the term of the said charge; and during the term of such charge, the registered holder for the time being of the said shares shall have all the other rights and powers of a shareholder in the railway or canal company in respect of the said shares; and the railway or canal company shall not be bound to sue to the application

Rights and duties of persons registered for the time being in respect of the shares.

Sect. 87. of any dividend received by such registered holder, but as between himself and the person or persons for the time being, entitled to such shares, he shall hold any dividend which may be received by him in trust for the person who, at the time when such dividend shall become payable, was the person entitled to the said shares.

Entire shares to belong to parties in proportion to their payments and to be released to them from time to time.

88. Whenever any person or those whom he legally represents as their executor or administrator shall have been bound to make, and shall have made, such and so many periodical payments of the charge as to repay thereby principal money which, in proportion to the whole amount of principal money charged and the whole number of the said shares, shall correspond to any integral number of shares, with or without a fraction over, it shall be lawful for the Commissioners, on the application of such person made either during the term of the charge or within two years after its expiration, to certify that fact under their hands and seal, and by the same certificate to appropriate to such person certain specified shares to such integral number, and to deliver to him the corresponding share certificates; and upon the production to the railway or canal company of such certificate by the Commissioners and share certificates, it shall be lawful for such person, if he shall not already be the registered holder, to require such shares to be transferred to him, and the railway or canal company shall make an entry or memorial on their register of shareholders of such shares being freed from the provisions of this Act, or of the term of the charge having expired, as the case may be, and such shares shall thenceforward be held and transferred in the same manner as any other shares in the same company, but if the term of the charge shall not have expired the three last preceding sections of this Act shall still apply to the residue of the shares to which the same charge shall relate.

Shares not claimed within two years from expiration of term to belong to person bound to make last payment of charge.

89. The shares composing the said residue shall at the end of two years after the expiration of the term of the charge belong to the person who shall have been bound to make the last periodical payment of the charge, or to his executors or administrators, on such payment being made; and the Commissioners shall deliver to him or them the corresponding share certificates, and certify the title to the shares under their hands and seal in accordance with the above provision; and upon the production to the railway or canal company of the share certificates and such certificate by the Commissioners, such person as aforesaid, or his executors or administrators, shall have the said shares transferred to him or them, so far as he or they shall not be already the registered holder or holders thereof; and the railway or canal company shall make an entry or memorial on their register of shareholders of the term of the charge having expired, and thenceforward the said shares shall be held and transferred in the same manner as any other shares in the same company.

SCHEDULES to which the foregoing Act refers.

Sched.

SCHEDULE (A).

*Provisional Order.**(Proper Heading.)*

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, sanction the proposed improvements expressed upon the terms and conditions that such improvements be executed in the manner mentioned or specified in the said contract, and at an expense not exceeding the sum of and do hereby declare and provisionally order that it is right and proper, and for the benefit of the parties interested in the lands mentioned in the schedule hereto, that the inheritance or fee of such lands should be charged with the said sum of together with the costs, charges, and expenses preparatory or in relation to and consequent on the said contract and the application for this order, and that the same should, to the whole amount of such respective moneys, [or should, to any amount not exceeding as the case may be,] be charged in the manner following; (that is to say,) [here express how the amount is to be repaid, with interest.]

In witness whereof they have hereunto affixed their hands and seal, this day of in the year of our Lord one thousand eight hundred and .

SCHEDULE OF LANDS PROVISIONALLY CHARGED.

Name, &c., of Lands.	Landowner.	Occupier.	Parish.	County.	Total acreage.	Total rental.

SCHEDULE (B.).

The Improvement of Land Act, 1864.

County of
Parish of
No.

Absolute Order.

[Here insert name of landowner] of [here insert address].

Loan of pounds for the improvement of in the parish of in the county of .

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this absolute order

Sched. under their hands and seal, charge the inheritance or fee of the lands mentioned in the schedule hereto, with the payment to of the yearly sum of pounds shillings and pence, payable half-yearly on the day of and the day of in every year, for the term of years, and being a proportionate repayment, according to the Table annexed, of the capital sum of pounds, with interest at per cent. per annum, the first half-yearly payment to be made on the day of .

Dated this day of 18 .

SCHEDULE OF LANDS CHARGED.

Name, &c., of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-Yearly Payments.	Proportionate Repayments of the Loan.	Interest at £ per Cent. per Annum

SCHEDULE (F.).

Vesting Order.

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, in consideration of £ to them paid by A.B. of transfer to and vest in the said A.B., his executors, administrators, and assigns, shares of and in the railway or canal company, numbered and now registered in the name of C. D.

In witness whereof they have hereunto affixed their hands and seal, this day of in the year one thousand eight hundred and .

THE RAILWAY COMPANIES POWERS ACT, 1864.

(27 & 28 VICT. CAP. 120.)

An Act to facilitate in certain Cases the obtaining of further Powers by Railway Companies.

*Preliminary.***Sect. 1.**

1. This Act may be cited as the Railway Companies' Powers Act, 1864. Short title.

Section 2. *Interpretation of Terms.*—These are similar to the definitions in section 2 of the Railways Construction Facilities Act, 1864, *post*.

Description of Cases within this Act.

3. This Act shall take effect and apply in each of the cases following ; namely, Act to apply in cases therein named.

- (1.) Where a railway company are desirous that authority should be given to themselves and some other railway company or companies to enter into an agreement with respect to all or any of the matters following ; namely,

The maintenance and management of the railways of the companies respectively, or of any one or more of them, or of any part thereof respectively ;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon ;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic ;

The joint ownership, maintenance, management, and use of a station or other work ; or the separate ownership, maintenance, management, and use of several parts of a station or other work :

- (2.) Where a railway company are desirous of obtaining an extension of the time limited for the sale by them of superfluous lands :

- (3.) Where a railway company incorporated by special Act or by certificate under the Railways Construction Facilities Act, 1864, are desirous of obtaining authority to raise additional capital.

This section has been extended by section 38 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), as follows.

38. The Railway Companies Powers Act, 1864, shall take effect and apply in all the following cases, in the same manner as if they were specified in section 3 of that Act ; (that is to say),

Where a company desire to make new provisions, or to alter any of the provisions of their special Act, or of " The Companies Clauses Consolidation

Sect. 3. Act, 1845," so far as it is incorporated therewith, with respect to all or any of the matters following : namely,

- (a.) The general meetings of the company and the exercise of the right of voting by the shareholders.
- (b.) The appointment, number and rotation of directors.
- (c.) The powers of directors.
- (d.) The proceedings and liabilities of directors.
- (e.) The appointment and duties of auditors.

Application for Certificate.

As to application for certificate by company to Board of Trade.

4. In any such case the company, if desirous to obtain a certificate under this Act, shall proceed as follows ; namely,

- (1.) They shall apply to the Board of Trade for a certificate under this Act :
- (2.) They shall lodge at the office of the Board of Trade a draft of the certificate as proposed by them :
- (3.) They shall publish notice of the application according to the general rules under this Act.

Said Board to inquire if requirements have been complied with ;

5. As soon as conveniently may be after the time for completion of the required notice, the Board of Trade shall proceed to inquire whether the company have complied with the requirements of the general rules respecting notice.

and to consider all representations and objections.

6. The Board of Trade, before settling a draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Sections 7 and 8 relating to the opposition of railway and canal companies have been repealed by the Railways (Powers and Construction) Act, 1864, Amendment Act, 1870 (33 & 34 Vict. c. 19). Section 3 of that Act gives these companies the right to be heard by counsel, witnesses, &c., against applications for certificates under this Act and the Construction Act. A new form of notice of opposition is substituted. See Schedule, *infra*, p. 273. If the certificate is approved by the Board of Trade, after having such opposition, it has to be confirmed by a public Act of Parliament.

Settlement of Draft Certificate.

Power to Board of Trade to settle certificate according to nature of application as herein-named.

9. Where the Board of Trade proceed on the application, then, on being satisfied that the company have complied with the requirements of the general rules respecting notice, they may, if they think fit, settle a draft of a certificate, certifying to the effect following : namely,

- In the first-mentioned case, that the companies in the certificate specified are authorised to agree among themselves with respect to all or any of the matters aforesaid in the certificate specified ;
- In the secondly-mentioned case, that the time limited for the sale by the company of superfluous lands is extended as in the certificate specified ;
- In the thirdly-mentioned case, that the company are authorised to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of

new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock. **Sect. 9.**

10. The Board of Trade may (subject to the provisions of this Act, and having regard to the provisions of any special Act relating to any company empowered by a certificate,) insert in the certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate, and the same shall be deemed to all intents part of the certificate. Insertion of conditions in certificate.

11. The certificate may be in the form set forth in the schedule to this Act, with such provisions as aforesaid. Form of certificate.

Submission of Draft Certificate to Houses of Parliament.

12. The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament within seven days after the same is settled, if Parliament is then sitting, or if not, then within seven days after the next meeting of Parliament, but not later in any year than the first day of June. Draft certificate to be laid before Houses of Parliament.

13. On the draft certificate being settled the promoters shall give notice thereof according to general rules under this Act. Notice thereof to be given.

14. If either House of Parliament within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House resolves that the certificate ought not to be made, the same shall not be further proceeded with. If either House resolve that certificate ought not to be made, it shall not be proceeded with.

15. If neither House of Parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament, has expired the Board of Trade may make and issue a certificate in conformity with such draft. If neither House resolve that certificate ought not to be made, Board of Trade may issue the same.

16. The certificate shall be published as follows ; namely, Where one company only is thereby empowered, then in the *London, Edinburgh, or Dublin Gazette*, according as the head office of the company is situate in England, Scotland, or Ireland : Publication of certificate in Gazette.

Where two or more companies are thereby empowered, then in one or more of the *Gazettes*, according as the several head offices of the companies respectively are situate in England, Scotland, and Ireland respectively.

Effect of Certificate.

17. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed then as from the time of such publication, the certificate shall have the same force Operation of certificate as special Act.

Sect. 17. and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with this Act) had been expressly enacted by Parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court or elsewhere.

See note on sections 7 and 8 *ante*.

Judicial
notice of
certificate.

18. The certificate shall be judicially noticed without being specially pleaded.

Interpreta-
tion of cer-
tificate.

19. Terms used in the certificate shall have the same meanings as they have when used in this Act.

Parts of
26 & 27 Vict.
cc. 92 & 118
incorpor-
ated.

20. There shall be incorporated with the certificate (which shall for this purpose be deemed the special Act)—

In the first-mentioned case, Part III. of the Railways Clauses Act, 1863;(a)

In the thirdly-mentioned case, the Companies Clauses Acts.

(a) *Ante*, p. 147.

Rule as to
short dis-
tances.

21. In the first-mentioned case, during the continuance of any agreement for the joint working of any two railways, in the calculation of tolls and charges for short distances in respect of traffic conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

Restriction
as to issue of
shares.

22. It shall not be lawful for any company empowered by a certificate under this Act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

Restrictions
on company
as to bor-
rowing, &c.

23. In the thirdly-mentioned case the company, whether incorporated by special Act or by certificate, shall be subject to the following restrictions; namely,

- (1.) They shall not exercise any power of borrowing money under the certificate until the whole of the share capital authorized by the certificate is subscribed for or taken, and until one half thereof is actually paid up, and until they prove to the justice who is to certify under section 40 of the Companies Clauses Consolidation Act, 1845, or (in Scotland) to the sheriff who is to certify under section 42 of the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares are taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence):

- (2.) They shall not borrow a larger sum in the whole than one third of the amount of the share capital authorized by the certificate : **Sect. 23.**
- (3.) They shall not out of money raised under the certificate by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made as is allowed by the Companies Clauses Acts):
- (4.) They shall not, out of money so raised, pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade :
- (5.) They shall apply every part of the money so raised only for the purposes for which it is by the certificate authorized to be applied.

Miscellaneous.

24. Nothing in this Act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case if it appears to the Board of Trade for any reason that the application for a certificate should not be complied with. **Power to Board of Trade to reject application.**

25. Nothing in the certificate shall exempt any railway to which it relates, or the company to whom that railway belongs, from the provisions of any general Act of Parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken in respect of that railway. **Nothing to exempt railways from operation of general Acts.**

26. A certificate may be made under this Act and the Railways Construction Facilities Act, 1864, jointly, and in any such case the forms of certificate given in this Act and the said Act may be adapted to the circumstances of the case. **Certificate under this and Railways Construction Act.**

27. Where, in case the company were proceeding by a Railway Bill instead of under this Act, the approval of the Bill in any manner by the members of the company would be required under the Standing Orders of either House of Parliament for the time being in force, the Board of Trade shall not issue a certificate without being satisfied that the members of the company have in like manner approved of the application to the Board of Trade. **Approval by members of company required, as under Standing Orders.**

28. Subject and according to the restrictions and provisions of this Act, the Board of Trade, on the application of the company, may from time to time amend, extend, or vary by certificate any certificate issued under this Act, and may by certificate revoke a previous certificate issued under this Act. **Power for Board of Trade to amend or revoke certificate.**

Sect. 29. 29. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate or in relation thereto, the Board of Trade may, subject and according to the restrictions and provisions of this Act, on the application of the company, body, or person affected by the error, and on notice to the company or companies empowered by the certificate, correct the error by a further certificate.

Power to correct error.

Proof of certificate.

30. A copy of the *London* or *Edinburgh* or *Dublin Gazette* containing a certificate or a copy of a certificate, purporting to be printed by the printers of the *London*, *Edinburgh*, or *Dublin Gazette*, shall be conclusive evidence of the certificate and of the due publication thereof, without any proof of the gazette or without any proof of the copy having been in fact so printed, as the case may be.

Copies of certificate for sale.

31. Every company empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the gazette or one of the gazettes in which the same was published in such form as general rules direct, to be sold to all persons desiring to buy the same at a price not exceeding one shilling for each copy.

If any company fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

Application of Act to proprietors of railways generally.

32. The provisions of this Act relative to the first-mentioned case and to the secondly-mentioned case respectively shall extend and apply, *mutatis mutandis*, to the proprietors of a railway although not incorporated as a company.

Recovery and application of penalties.

33. Penalties under this Act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, are recoverable and applicable.

Custody of documents. 7 Will. 4, & 1 Vict. c. 88.

34. The Act of the session of the seventh year of King William the Fourth and the first year of Her Majesty (chapter eighty-three), "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament," shall apply to documents required to be deposited by general rules under this Act.

See notes to Standing Orders, *post*, p. 301.

General rules in schedule, with power for amendment.

35. The general rules under this Act shall in the first instance be those set forth in the schedule to this Act; and the Board of Trade may from time to time, for the better execution of this Act, make general rules adding to, altering, or revoking any general rules for the time being in force under this Act; but any general rules so made by the Board of Trade shall not have effect unless and until they are laid before both Houses of Parliament, and if either House of Parliament, within six weeks after the same are laid before that House, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof

(as the case may be) shall not take effect ; otherwise all rules made by the Board of Trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this Act. Sect. 35.

All general rules which are to take effect under the present section shall be published in the *London, Edinburgh, and Dublin Gazettes*.

36. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past. Annual report to Parliament by Board of Trade.

The SCHEDULE referred to in the foregoing Act.

(i.) *Notice of Opposition.*

In the matter of

The Railway Companies Powers Act, 1864, and the Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870,

and

The application of the Railway Company for a certificate, the draft whereof is intituled [*set out title*].

We, the Railway [or Canal] Company hereby declare and give notice that we desire to be heard by counsel, agents, and witnesses against the granting to the above-named railway company of the powers sought to be obtained by them by the above-mentioned application.

Dated this day of , 18 .

Witness A.B.

L. S.

This notice was substituted by 33 & 34 Vict. c. 19, for the one given in this Act.

(ii.) *Form of Certificate of Board of Trade.*

The Railway Company.

Certificate of the Board of Trade for the Extension of Time for Sale of Superfluous Lands [*or as the case may be*].

Whereas the Railway Company have complied with the requirements of the Railway Companies Powers Act, 1864 :

Now, therefore, the Board of Trade do, by this their certificate, in pursuance of the said Act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows :

[*Here are to follow the provisions of the certificate showing the powers conferred and the terms and conditions (if any) imposed.*]

(Signed) C.D.

Secretary to the Board of Trade.

The Board of Trade,
Whitehall.

Dated this day of .

Sched.(iii.) *General Rules.**Form of Application.*

1. The application to the Board of Trade for a certificate is to be made by a memorial in writing under the common seal of the company, lodged at the office of the Board of Trade.

2. Together with the memorial the company are to lodge a printed draft of the certificate as proposed by the company.

Advertisements as to Application.

3. Notice of the application to the Board of Trade is to be given by advertisement published as follows : namely,

In every case, once in each of three successive weeks in some one and the same newspaper of the county, city, or town, or county of a city or town, wherein the head office of the promoters is situate :

In the case referred to in the foregoing Act as the first-mentioned case, once in each of three successive weeks in some one and the same newspaper of each county, city, or town, or county of a city or town, wherein the head office of any railway company with whom the promoters propose to enter into an agreement is situate :

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county :

In every case where one company only is proposed to be empowered, then in the *London, Edinburgh, or Dublin Gazette*, according as the head office of the company is situate in England, Scotland, or Ireland :

In every case where two or more companies are proposed to be empowered, then in one or more of the gazettes, according as the several head offices of the Company respectively are situate in England, Scotland, and Ireland respectively.

4. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

5. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

6. Each advertisement is to state that all persons desirous of making to the Board of Trade any representation, or of bringing before them any objection, respecting the application, may do so by letter addressed to the secretary of the Board of Trade on or before the first day of August or first day of January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

7. Within one week after the publication of the latest advertisement a copy of each of the newspapers and gazettes containing the several advertisements is to be lodged at the office of the Board of Trade.

*Notice to Landowners.*Sched.

8. In the case referred to in the foregoing Act as the secondly-mentioned case, the promoters, in the month of June or in the month of November (as the case may be) in which the advertisements are published, are to serve notice of the application on the owners of lands adjoining to the lands to which the application relates.

Notice of Opposition.

9. Notice of opposition by a railway or canal company is to be lodged at the office of the Board of Trade, not later than the first day of August or first day of January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

10. On the draft certificate being settled by the Board of Trade the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person by whom any representation or objection respecting the application was made to or brought before the Board of Trade, and are also to give by advertisement or otherwise such public or other notice (if any) thereof as according to the circumstances of the case the Board of Trade direct.

Supply of Copies of Draft Certificate.

11. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than sixpence each.

12. From the time of the settlement of the draft certificate by the Board of Trade the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Printing of Certificate.

13. Copies of the certificate printed by the printers of a gazette are to be printed on ordinary white folio paper, similar in size to that on which the public general Acts of Parliament are printed for public sale.

RAILWAYS CONSTRUCTION FACILITIES ACT, 1864.

(27 & 28 VICT. CAP. 121.)

An Act to facilitate in certain cases the obtaining of Powers for the Construction of Railways.

Certain provisions of this Act are here printed as it is believed that they will be of use in framing orders for light railways.

Preliminary.

Short title. 1. This Act may be cited as the Railways Construction Facilities Act, 1864.

Interpreta-
tion of
terms.

2. In this Act—

The term "lands" includes any estate, right, or interest in lands :

The term "the promoters" means in each case the company or persons intending to apply to the Board of Trade for such a certificate as is hereinafter provided for, and, after the application is made, the company or persons actually making the application, as the case may require :

The term "the railway" means in each case the railway and works intended by the promoters before the issuing of the certificate, and, after the issuing thereof, the railway and works therein comprised, as the case may require :

The term "the Lands Clauses Acts" means so far as the enactment in which that term is used relates to England, or to a certificate to be operative in England, the Lands Clauses Consolidation Act, 1845 ; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845 ; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860 ; and so far as the same relates to Ireland, or to a certificate to be operative in Ireland, the Railways Act (Ireland), 1851, together with Acts incorporated in or amending that Act :

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, the Companies Clauses Consolidation Act, 1845 ; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845 ; together with, in each case, the Companies Clauses Act, 1863 :

The term "the Railways Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, the Railways Clauses Consolidation Act, 1845 ; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Railways Clauses Consolidation (Scotland) Act, 1845 ; together with, in each case, the Railways Clauses Act, 1863 :

The term "railway Bill" means a Bill pending in or intended to be introduced into either House of Parliament, having for its object or one of its objects to authorise the making of a railway :

Sect. 2.

Contracts for Lands.

3. Where promoters of a railway intend to apply, under this Act, for authority to make the railway, they and all parties seised or possessed of or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorised by a special Act of Parliament, are conferred by the Lands Clauses Acts on the promoters of the undertaking so authorised and on parties seised or possessed of or entitled to lands, or any estate, right, or interest in lands, required for that undertaking ; all which powers and capacities shall be enjoyed and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if the promoters had obtained a special Act incorporating the Lands Clauses Acts, and authorising them to make the railway, and to purchase or take the lands required for the same ; subject, nevertheless, to the following restrictions and provisions ; namely,

Power for promoters of railway and all persons interested in land to enter into provisional contracts for land required.

- (1.) Nothing herein shall confer on the promoters and parties aforesaid any of the powers or capacities conferred by the part of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those Acts with respect to the entry upon lands by the promoters of the undertaking, or by such provisions of those Acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement, (except only as to such of those provisions as provide for the determination of the amount of compensation to be paid for enfranchisement of copyholds ; and for the purposes of the present section, section 96 of the Lands Clauses Consolidation Act, 1845, relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom) :
- (2.) Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the Lands Clauses Acts, as applied by the present section, shall have capacity only to contract with the promoters for the sale of those lands, and shall not (before such a certificate of the Board of Trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this Act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands :
- (3.) The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this Act only to

Sect. 3.

contract for lands, and they shall not have capacity, further or otherwise than if this Act had not been passed, to take or hold lands :

Contracts for sale of lands belonging to the Crown, Duchy of Lancaster or Duchy of Cornwall, how to be made.

4. Where lands required for the railway belong to or are enjoyed by Her Majesty the Queen, her heirs or successors, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, any contract for the purposes of this Act may be entered into in respect of those land, as follows ; namely,

In the first-mentioned case, by the Commissioners of Woods, or one of them, with the consent of the Treasury ;

In the secondly-mentioned case, by the Chancellor of the Duchy by writing under his hand attested by the clerk of the council of the duchy ;

In the thirdly-mentioned case, by the Duke of Cornwall or other the persons for the time being empowered to dispose for any purpose of lands of the duchy :

User of or interference with public or turnpike roads.

5. Notwithstanding anything in this Act, it shall not be necessary for the promoters, before applying under this Act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway ; but the Board of Trade before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto.

Incorporation of Company.

In what cases company shall be incorporated.

24. Where the promoters are not a company incorporated by special Act, or by previous certificate under this Act, and are seven or more in number, a company shall be incorporated by the certificate, for the purposes thereof.

In others company may be incorporated

25. Where the promoters are not a company incorporated by special Act, or by previous certificate under this Act, and are less than seven in number, a company may be incorporated by the certificate for the purposes thereof, if the promoters so desire.

Power for Board of Trade to incorporate company by certificate.

26. Where the certificate incorporates a company, it shall contain proper provisions with apt terms for creating a body corporate, by an appropriate name, with perpetual succession and a common seal, and with power to take, hold, and dispose of lands and other property, for the purposes and subject to the restrictions of the certificate, and may confer on the company power to borrow on mortgage, and all other usual or proper powers.

Incorporation of Companies Clauses Acts.

27. In every such case, the Companies Clauses Acts shall be incorporated with the certificate (which shall be deemed the special Act).

Restriction as to issue of shares.

28. It shall not be lawful for any company empowered by a certificate under this Act to issue any share created under the authority of the certificate, nor shall any such share vest in the

person accepting the same, unless and until a sum not being less than one fifth part of the amount of such share is paid up in respect thereof. **Sect. 28.**

29. Every company, whether incorporated by special Act or by certificate, empowered by a certificate to borrow money, shall as regards the money so authorised to be borrowed, be subject to the following restrictions ; namely, **Restrictions on company as to borrowing, &c.**

- (1.) They shall not exercise the said powers of borrowing any money until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under section 40 of the Companies Clauses Consolidation Act, 1845, or (in Scotland) to the sheriff who is to certify under section 42 of the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence) :
- (2.) They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorized by the certificate :
- (3.) They shall not out of money raised under the certificate by calls or borrowing pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise ; (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made, as is allowed by the Companies Clauses Acts) :
- (4.) They shall not out of money so raised pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade :
- (5.) They shall apply every part of the money so raised only for purposes for which it is by the certificate authorised to be applied.

30. Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company. **Contracts by promoters binding on company.**

See *ante*, p. 7.

Construction of Railway.

31. The Railways Clauses Acts shall be incorporated with the certificate (which shall be deemed the special Act), except as may be therein excepted, and except as to the following provisions ; namely, **Incorporation of Railways Clauses Acts in**

- (1.) Such of the provisions with respect to the construction of the

Sect. 31.

certificate,
exempt as to
compulsory
powers, &c.

railway and the works connected therewith as relate to the correction of errors and omissions in plans or to plans and sections of alterations :

- (2.) With respect to the temporary occupation of lands near the railway during the construction thereof :
- (3.) With respect to leasing the railway :
and subject to the following provisions ; namely,
 - (1.) Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement :
 - (2.) Any provision referring to the datum line described in the section approved of by Parliament shall be read as referring to the datum line described in the section approved of by the Board of Trade.

Restriction
on altera-
tions of plan
or section.

32. Where the promoters desire to make any alteration in the deposited plan or section, they may do so with the consent of the Board of Trade ; but the Board of Trade shall not settle a draft of a certificate without being satisfied that all parties interested in lands liable to be affected by or in consequence of the alteration consent thereto.

Section 33 relating to the gauge of railways has been repealed by 33 & 34 Vict. c. 19, s. 5.

Provisions to secure Completion of Railway.

Promoters
to deposit
eight per
cent. on
estimate in
Court of
Chancery,
&c.

34. After the certificate is ready to be issued, and before the same is issued, by the Board of Trade, the promoters, unless they are a previously existing company possessed of a railway open for public traffic, shall, within such time as general rules under this Act direct, pay as a deposit a sum of money not less than eight per centum on the amount of their estimate of the expense of the construction of the railway, as follows ; namely,

Where the railway or any part thereof will be situate in England,—into the Bank of England, in the name and with the privy of the Accountant-General of the Court of Chancery in England :

Where the railway will be situate wholly in Scotland,—either into the Bank of England in manner aforesaid, or (at the option of the promoters) into a Bank in Scotland established by Act of Parliament or Royal Charter, in the name and with the privy of the Queen's Remembrancer of the Court of Exchequer in Scotland :

Where the railway will be situate in Ireland,—into the Bank of Ireland, in the name and with the privy of the Accountant-General of the Court of Chancery in Ireland.

Warrant of
Board of
Trade for
payment
into court.

35. The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the persons therein named, or the majority or survivors of them, to pay the money therein mentioned into the bank therein mentioned, in the name and with the privy of the officer therein mentioned, and for that officer to receive the same, to be placed to his account there, *ex parte* the railway therein mentioned, according to the method (prescribed by statute, or general rules or orders of

court, or otherwise,) for the time being in force respecting the **Sect. 35.**
 payment of money into the said courts respectively, and without fee
 or reward.

36. Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective court is for the time being permitted to be invested, or of Exchequer Bills (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase); and in that case the Board of Trade shall vary their warrant accordingly.

Liberty for promoters to bring in Exchequer bills, &c.

37. At any time when the office of the Accountant-General of the Court of Chancery in England or Ireland is closed, a deposit under this Act may nevertheless be made, in such manner as general orders of the respective courts authorize and direct.

Provision for vacations in offices of courts.

38. Where money is so paid into the Court of Chancery in England or Ireland, the court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the court thinks fit.

Power for court to direct investment.

39. In the subsequent provisions of this Act, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, or stocks, funds, securities, or Exchequer Bills deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorizing the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

Interpretation of "deposit fund" and "Depositors" in following provisions.

40. The court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid, transferred, or delivered out to the applicants, or as they direct, in any of the following events; namely,

Repayment of deposit on completion of railway or on terms.

- (1.) If, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company, or persons thereby empowered to make the railway, complete it and open it for public traffic; and
- (2.) If, within the same time, they (being a company) prove to the satisfaction of the Board of Trade that one-half of their nominal capital authorized by the certificate is paid up, and that they have expended a like amount for the purposes of the certificate; or
- (3.) If, at any time after the issuing of the certificate, they execute and deliver to the solicitor of Her Majesty's Treasury a bond with a surety or sureties (such bond being prepared to the satisfaction of, and such surety or sureties being approved by, the said solicitor) in a penal sum of twice the amount of the money required to be deposited, conditioned

Sect. 42.

to the effect following, namely,—for payment to Her Majesty, her heirs or successors, of the amount of the money required to be deposited, if the company or persons empowered by the certificate do not, within the time aforesaid, either complete the railway and open it for public traffic, or (being a company) give such proof as aforesaid respecting their capital and expenditure.

Sections 41 and 42 deal with forfeiture of the deposit, but see now the Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27), *post*, the provisions of which will, no doubt, be made applicable by the order authorising the light railway.

Depositors
to receive
dividends
accruing
while fund
in court.

43. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly.

Proof as to
capital and
expenditure,
execution of
bond, &c.

44. The certificate of the Board of Trade that such proof as aforesaid respecting the capital and expenditure of any company has been given to the satisfaction of the Board of Trade, and the certificate of the solicitor of Her Majesty's Treasury that such bond as aforesaid has in any case been prepared, executed, and delivered to his satisfaction, shall respectively be sufficient evidence of the matters therein certified.

Protection
to Board of
Trade in
case of
error, &c.

45. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

Mode of
application
to courts.

46. Any application under this Act to the Court of Chancery in England or Ireland shall be made in a summary way in such manner as general orders of those courts respectively direct.

Penalty on
company
failing to
open new
railway in
certain
cases.

48. Where a certificate is obtained by a previously existing company possessed of a railway open for public traffic, then, if the company fail to complete the railway and open it for public traffic within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company shall be liable to a penalty of not less than twenty pounds and not exceeding fifty pounds for every day during which such failure continues, except only in respect of any time during which it appears from a certificate of the Board of Trade that the company were prevented from completing the railway or opening it for public traffic by unforeseen accident or circumstances beyond their control, but the want of sufficient funds shall not be deemed a circumstance beyond their control within the meaning of this provision.

*Application of General Railway Acts.***Sect. 51.**

51. The enactments described in the schedule to this Act, and any enactments amending, perpetuating, or otherwise affecting any of them, so far as the same are in force at the passing of this Act, shall extend and apply, as the case may require, to the railway, and to the company or persons empowered by the certificate to make the railway, and shall in all respects operate in relation thereto respectively as if they were expressly repeated and re-enacted in this Act, subject, nevertheless, and according to the following variations and provisions; namely,

Enactments in Schedule applied to the railway and company, subject to variations.

- (1.) For the purposes and within the meaning of any of those enactments, the railway shall be deemed to be a railway made and constructed and carried on under the authority of Parliament and under the powers and provisions of an Act of Parliament, and the certificate (taken in conjunction with this Act) shall be deemed to be a special Act of Parliament regulating or relating to the railway, or the company, body, or persons empowered to make the same (as the case may require) :
- (2.) Such of those enactments as refer to the time of the passing of an Act of Parliament for the construction of a railway, or to the last day of the session in which such an Act is passed, shall respectively be read and have effect as referring to the time of the commencement of the operation of the certificate :
- (3.) The terms "company" and "railway company" used in any of those enactments shall respectively include any persons empowered by the certificate to make the railway :
- (4.) Such of those enactments as refer to the directors, or any director, or the secretary, chief or other clerk, accountant, treasurer, or other officer of a company, shall extend and apply to every or any one of the persons (not being a company) empowered by the certificate to make the railway :
- (5.) Such of those enactments as refer to a writing under the common seal of the company shall be read and have effect as referring to a writing under the hand and seal of any one of such persons, as aforesaid :
- (6.) Such of those enactments as impose any penalty or forfeiture, or any pecuniary liability or any obligation, on a company, or give any right, remedy, or process against a company, shall be read and have effect (so far as the nature and circumstances of the case admit) as imposing a like penalty, forfeiture, liability, or obligation on, or as giving a like right, remedy, or process against, every or any one of such persons, as aforesaid, but not so as to authorize the recovery of any penalty or forfeiture from, or the enforcement of any pecuniary liability against, more than one of such persons in respect of the same offence, matter, or thing :
- (7.) The amount of any compensation to be made to the owners and occupiers of any lands for loss or injury or incon-

Sect. 51.

venience sustained by them respectively by reason of any works done under the authority of any of those enactments shall, in case of dispute, be settled in manner directed by the Lands Clauses Acts and the Railways Clauses Acts as respectively applicable to the case :

- (8.) Such of those enactments as provide for the case of the Board of Trade certifying that the public safety requires additional land to be taken by a company for the purpose of giving increased width to the embankments or inclination to the slopes of the railway, or for making approaches to bridges or archways, or for doing works for the repair or prevention of accidents or slips happening or apprehended to the cuttings, embankments, or other works of the railway, shall be read and have effect, as regards such portions of land as are mentioned in any certificate so given by the Board of Trade, as if compulsory powers of purchasing and taking lands had been contained in the certificate under this Act authorising the making of the railway, and the provisions of the Lands Clauses Acts and the Railways Clauses Acts relative to the compulsory purchase or taking of land had been incorporated with that certificate :
- (9.) If the railway is in any respect constructed contrary to the provisions of the certificate, or of this Act, it shall be deemed to be constructed contrary to the provisions of any of those enactments applicable in the case ;
- (10.) Nothing herein shall extend or make applicable, for the purposes of this Act, to or in any one of the parts of the United Kingdom, any of those enactments not in force there independently of this Act.

The schedule mentioned above is omitted. For the general Acts now applicable, see section 12 of the Light Railways Act and the note thereto, *ante*, p. 70.

THE BOARD OF TRADE ARBITRATION, &c., ACT, 1874.

(37 & 38 VICT. CAP. 40.)

An Act to amend the powers of the Board of Trade with respect to inquiries, arbitrations, appointments, and other matters under special Acts, and to amend the Regulation of Railways Act, 1873, so far as regards the reference of differences to the Railway Commissioners in lieu of Arbitrators.

Preliminary.

Short title. 1. This Act may be cited as the Board of Trade Arbitrations, &c., Act, 1874.

Section 15 (1) of the Light Railways Act, 1896, *ante*, p. 72, makes Part I. of this Act applicable to local inquiries held by the Board of Trade for the purposes of that Act.

PART I.

*Board of Trade Inquiries, &c.***Sect. 2.**

2. Where under the provisions of any special Act, passed either before or after the passing of this Act, the Board of Trade are required or authorised to sanction, approve, confirm, or determine any appointment, matter, or thing, or to make any order or to do any other act or thing for the purposes of such special Act, the Board of Trade may make such inquiry as they may think necessary for the purpose of enabling them to comply with such requisition or exercise such authority.

Power of Board of Trade as to inquiry.

Where an inquiry is held by the Board of Trade for the purposes of this section, or in pursuance of any general or special Act passed either before or after the passing of this Act, directing or authorising them to hold any inquiry, the Board of Trade may hold such inquiry by any person or persons duly authorised in that behalf by an order of the Board of Trade, and such inquiry if so held shall be deemed to be duly held.

3. Where application is made in pursuance of any special Act passed either before or after the passing of this Act, to the Board of Trade to be arbitrators, or to appoint an arbitrator, referee, engineer, or other person, or to hold any inquiry, or to sanction, approve, confirm, or determine, any appointment, matter, or thing, or to make any order, or to do any other act or thing for the purposes of such special Act, all expenses incurred by the Board of Trade in relation to such application and the proceedings consequent thereon, shall, to such amount as the Board of Trade may certify by their order to be due, be defrayed by the parties to such application, and (subject to any provision contained in the said special Act) shall be defrayed by such of the parties as the Board of Trade may by order direct, or if so directed by an order of the Board of Trade shall be paid as costs of the arbitration or reference.

Expenses connected with arbitration, sanction, &c.

The Board of Trade may, if they think fit, on or at any time after the making of the application, by order require the parties to the application, or any of them, to pay to the Board of Trade such sum as the Board of Trade think requisite for or on account of those expenses, or to give security to the satisfaction of the Board of Trade for the payment of those expenses on demand, and if such payment or security is not made or given may refuse to act in pursuance of the application.

All expenses directed by an order of the Board of Trade or an award in pursuance of this section to be paid may be recovered in any court of competent jurisdiction as a debt, and if payable to the Board of Trade, as a debt to the Crown, and an order of the Board of Trade shall be conclusive evidence of the amount of such expenses.

4. In this part of this Act the term "special Act" means a local or local and personal Act, or an Act of a local and personal nature, and includes a provisional order of the Board of Trade confirmed by Act of Parliament and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864.

Meaning of "special Act."

Sect. 4. An order of the Board of Trade for the purposes of this part of this Act, or of any such special Act as is referred to in this part of this Act, may be made by writing under the hand of the President or of one of the secretaries of the Board.

Order of Board of Trade may be in writing.

See sections 12 and 15 of the Light Railways Act, *ante*, pp. 70, 72.

THE ARBITRATION ACT, 1889.

(52 & 53 VICT. CAP. 49.)

References by Consent out of Court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court.

Submission to be irrevocable, and to have effect as an order of court.

The effect of this section will be that once a matter is referred to arbitration under section 13 of the Light Railways Act, the arbitration will be irrevocable, except by leave. See note to next section. As to removing an arbitrator for misconduct, see section 11 of this Act.

The court will not restrain an arbitrator on the ground that the claimant is not entitled to compensation, as the arbitrator only determines the amount of, and not the right to, the compensation, and the court will not restrain a merely futile proceeding. *Sutton Harbour Improvement Company v. Hitchens*, 1 De G. M. & G. 161; *North London Railway Company v. Great Northern Railway Company*, 11 Q. B. D. 30; *Farrar v. Cooper*, 44 Ch. D. 323; *Kitts v. Moore* [1895], 1 Q. B. 253; and see note to section 13 of the Light Railways Act, *ante*, p. 71.

The court has power to give leave to revoke a submission when it appears that the arbitrator is going wrong in point of law, even in a matter within his jurisdiction. They will not exercise this power if the parties agree to have the matter raised in a special case for the opinion of the court. *East and West India Dock Company v. Kirk and Randall*, 12 A. C. 738.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

Provisions implied in submissions.

A "submission" is defined in section 27, *post*, p. 291. In the case of arbitrations to determine the amount of compensation under the Light Railways Act, there is, strictly speaking, no such submission, but by section 24 of this Act, it is enacted that in such cases the provisions of this Act shall apply as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration. The provisions in the First Schedule will, therefore, apply, except in so far as they are inconsistent with the order authorising the light railway; that order being the Act regulating the arbitration.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

(a.) and (b.) deal with the appointment of an arbitrator and are ministerial.

(c.) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to

act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award. Sect. 2.

Section 9 of this Act enables the court to enlarge the time. A difficult question will arise as to whether this schedule is to be the authority to bind the arbitrator under section 13 of the Light Railways Act, or the provisions of the Lands Clauses Acts which are to be incorporated without variation.

(*d.*) and (*e.*) relate to umpires.

(*f.*) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(*g.*) The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.

As to the power of the arbitrator to administer oaths, see section 7; to summon witnesses, sections 8, 18.

(*h.*) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

The court, however, may remit the award under section 10. In the case of compensation, the arbitrator determines the amount of—not the title to—compensation. See Chapter VII., *ante*, p. 48.

(*i.*) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

Section 34 of the Lands Clauses Consolidation Act, 1845, will be incorporated in orders authorising light railways where land is to be taken compulsorily. Under that section the costs are payable by the company unless they have previously offered a sum larger than the amount awarded. If the company have offered a larger sum each party pays his own costs. A question will arise as to whether this provision or that in section 34 is to govern. It is thought that the costs in such case will be regulated by section 34 in England and Wales. See *ante*, pp. 51, 72, 164, 286.

Section 3 deals with references to official referees.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. Power to stay proceedings where there is a submission.

If an action is brought in respect of an injury, for which compensation is clearly the remedy, this section would appear to apply, although in general such an action is not capable of being sustained, as no action will lie in respect of matter authorised by statute for which compensation is

Sect. 4. provided. If the action is brought in respect of negligence or excess of powers on the part of the light railway company the arbitrator would have no jurisdiction, and this section would not, therefore, be applicable.

Sections 5 and 6 deal with the powers of the parties and of the court to appoint arbitrators or an umpire in the case of vacancies arising from death, inability to act, or other cause.

In case of a reference under the Light Railways Act, the proper procedure would be to apply to the Board of Trade to appoint a new arbitrator.

Powers of arbitrators.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a.) To administer oaths to or take the affirmations of the parties and witnesses appearing; and
- (b.) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and
- (c.) To correct in an award any clerical mistake or error arising from any accidental slip or omission.

(a.) The Oaths Act, 1881, s. 1, enacts that "every person upon objecting to being sworn and stating as the ground of his objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to be sworn." If the witness objects on any other ground or refuses to state his ground, he must be sworn.

(b.) Under section 19 the arbitrator may also state a case for the opinion of the court during the arbitration. An appeal now lies to the Court of Appeal from the decision of the Divisional Court whether the case is stated in the award or pending the arbitration. As to the former case, see *In re Kirkleatham Local Board and Stockton and Middlesbrough Water Board* (1893), 1 Q. B. 375, 380, and as to the latter, see the Judicature (Procedure) Act, 1894, s. 1. As to costs see *In re Gonty and Manchester, Sheffield and Lincolnshire Railway Company*, 12 Times L. R. 620.

(c.) Compare also section 37 of the Lands Clauses Consolidation Act, which provides that no award shall be set aside for irregularity or matter of form.

Witnesses may be summoned by subpoena.

8. Any party to a submission may sue out a writ of *subpoena ad testificandum*, or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

As to the procedure regulating the issue of writs of *subpoena*, see Rules of Supreme Court, Order 37, rr. 26—34.

In case of witnesses in prison or in parts of the United Kingdom other than England or Wales, see section 18, *infra*.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.

See note to Schedule I. (c), *ante*, p. 286.

It has been held that the court may enlarge the time even after the award has been made, and thus render valid an award made after the time limited. *Lord v. Lee*, L. R. 3 Q. B. 404.

The Rules of the Supreme Court, Order 64, r. 14 A., provides that "where the time for making an award is enlarged the enlargement shall be deemed to be for one month unless a different time is specified in the order."

10. (1.) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire. **Sect. 10.**

Power to
remit
award.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

An award will not be remitted except upon the same grounds that awards were remitted pursuant to the Common Law Procedure Act, 1854, s. 8. *In re Keighley and Company*, and *Durant and Company* (1893), 1 Q. B. 405, 409.

As to remitting the award in order that the arbitrator may state it in the form of a special case, see *Re Kirkleatham Local Board and Stockton Waterworks Board Arbitration* (1893), 1 Q. B. 375, p. 377.

11. (1.) Where an arbitrator or umpire has misconducted himself the court may remove him. **Power to set aside award.**

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.

If the arbitrator refuses to hear evidence, or if he hears one side in the absence and without notice to the other, this may be sufficient misconduct to invalidate the award. *In re Gregson and Armstrong*, 70 L. T. 106.

The court will, however, set aside awards on other grounds than those above mentioned. The principal of these grounds are :—

1. That the award is bad on the face of it. *Wakefield v. Llanelly Railway and Dock Company*, 34 Beav. 245.

2. Mistake of law or of fact admitted by the arbitrator. *In re Dare Valley Railway Company*, 6 Eq. 429.

3. That the arbitrator has exceeded his jurisdiction. *Caledonian Railway Company v. Lockhart*, 3 Macq. 808.

Applications under this section are made by motion in court and the application must be made at any time before the last day of the sittings next after such award has been made and published to the parties. Rules of the Supreme Court, Order 64, r. 14.

12. An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect. **Enforcing award.**

This section will be applicable to enforce an award under the Light Railways Act when there is no *bond fide* dispute as to the right of the applicant to recover. The arbitrator under section 13 of the Light Railways Act will only have power to settle the amount of compensation (see note to that section). If there is any question of right to be determined the landowner can only enforce the award by bringing an action for the amount awarded, when the company will then be able to raise the question of right in defence. *Walker v. Beckenham Local Board*, 50 L. T. 206; *Beckett v. Midland Railway Company*, L. R. 1 C. P. 241; *In re East London Railway Company (Oliver's Claim)*, 24 Q. B. D. 507.

An award may be enforced although the time for setting it aside has not elapsed. Rules of the Supreme Court, Order 42, r. 31 A.

Sections 13—17 deal with references under order of court.

Sect. 18.

Power to compel attendance of witnesses in any part of the United Kingdom, and to order *habeas corpus* to issue.

18. (1.) The court or a judge may order that a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2.) The court or a judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

See also section 8.

Statement of case pending arbitration.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

An appeal now lies from any order on a special case. Judicature (Procedure) Act, 1894, s. 1.

Costs.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

This section will not generally apply to costs of arbitrations under the Light Railways Act. See note to Schedule I. (i), *ante*, p. 287. It may be applicable in the case of certain orders not under the control of the arbitrator and not falling under the provision of the order authorising the light railway. It might apply to orders of the court made under section 11, and is applicable to the costs of appeal in special cases. *In re Gonty and Manchester, Sheffield, and Lincolnshire Railway Company*, 12 Times L. R. 620.

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by rules of court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the court or a judge.

Order 54, r. 12 A. of the Rules of the Supreme Court, provides that a master may exercise all the jurisdiction conferred upon a court or a judge by this Act. Of the sections of this Act herein set out a master will have jurisdiction under sections 1, 4, 9, 10, 12, 18, 19. Applications under these sections should, therefore, be made by summons in chambers. Section 11 gives power to a court only; applications under that section will, therefore, be by motion.

Penalty for perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Crown to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

General.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act. **Sect. 24.**
Application of act to references under statutory powers.

Section 13 (3) of the Light Railways Act expressly provides that this Act shall apply to arbitrations thereunder.

Section 25 deals with pending arbitrations, and section 26 with repeals.

27. In this Act, unless the contrary intention appears,—

Definitions.

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

“Court” means Her Majesty’s High Court of Justice.

“Judge” means a judge of Her Majesty’s High Court of Justice.

“Rules of Court” means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

28. This Act shall not extend to Scotland or Ireland.

Extent.

29. This Act shall commence and come into operation on the first day of January, 1890. **Commencement.**

30. This Act may be cited as the Arbitration Act, 1889.

Short title.

THE PARLIAMENTARY DEPOSITS AND BONDS ACT, 1892.

(55 & 56 VICT. CAP. 27.)

An Act to authorise the release of certain deposits, and the cancellation of certain bonds, made or given to secure the performance of undertakings authorised by Parliament.

This Act will probably be made applicable to new companies formed to construct light railways when such companies are requested to make a deposit under section 11 (k) of the Light Railways Act, 1896, *ante*, p. 69.

1. (1.) Where in pursuance of any general or special Act of Parliament, or of any rules made thereunder, moneys or securities have been deposited with, or are standing in the name of, the Paymaster-General to secure the completion by any company of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the High Court may, notwithstanding anything in any such general or special Act or rules, order that the moneys or securities (in this Act called the deposit fund), or any part thereof, be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction or abandonment of the undertaking, or any portion thereof, or who have been subjected to injury or loss in consequence

Power to release deposits.

Sect. 1. of any compulsory powers of taking property given in connection with the undertaking, and have received no compensation or inadequate compensation for such injury or loss; and also, in the case of a tramway company, towards compensating the road authorities for the expenses incurred by them in taking up any tramway or materials connected therewith placed by the tramway company in or on any road vested in or maintainable by the road authorities, and in making good all damage caused to such roads by the construction or abandonment of the tramway.

(2.) Subject to payment of any such compensation, and notwithstanding any provision as to forfeiture to the Crown, the High Court may, if a receiver has been appointed, or the company is insolvent and has been ordered to be wound up, or the undertaking has been abandoned, order that the deposit fund or any part thereof be paid or transferred to the receiver or to the liquidator of the company, or be applied as part of the assets of the company for the benefit of the creditors thereof.

(3.) Subject to such application as aforesaid the High Court may, after such public notice as to the court seems reasonable, order that the deposit fund or any part thereof be paid or transferred to the depositors or the persons claiming through or under them.

(4.) If any money or securities deposited with or standing in the name of the Paymaster-General for the purposes of this section on or before the thirty-first of March, one thousand eight hundred and ninety, are not claimed by or on behalf of the depositors thereof within ten years after the passing of this Act, the Treasury may pay or transfer the same to the National Debt Commissioners to be applied by them towards the reduction of the National Debt.

(5.) This section shall apply to any person or body of persons authorised by Parliament or by any such certificate as aforesaid to carry out an undertaking as if he or they were a company.

For the construction of this section, see *In re Potteries, Shrewsbury, and North Wales Railway Company*, 25 Ch. D. 251; *In re Ruthin and Cerrigy-Druidion Railway Act*, 33 Ch. D. 438; *In re Uxbridge and Rickmansworth Railway Company*, 43 Ch. D. 536.

Power to
cancel
bonds.

2. Where in pursuance of any general or special Act of Parliament any bond has been given to secure the completion of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the money thereby secured shall be applicable to the same purposes as the deposit fund hereinbefore mentioned, and the Treasury may, if they think fit, cancel the bond on proof to their satisfaction that the money thereby secured has been applied or is not required for those purposes.

Sections 3 and 4 extend the Act to Scotland and Ireland.

THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

(56 & 57 VICT. CAP. 61.)

An Act to generalize and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties.

1. Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect :

Protection of persons acting in execution of statutory or other public duty.

- (a.) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof :
- (b.) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client :
- (c.) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment ; but this provision shall not affect costs on any injunction in the action :
- (d.) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

- (a.) The proceeding is to be commenced in any particular place ; or
- (b.) The proceeding is to be commenced within any particular time ; or
- (c.) Notice of action is to be given ; or

Sect. 2. (d.) The defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event ; or

(e.) The defendant may plead the general issue ; and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent in that schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act.

Saving as to
Scotland.

3. This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding.

Commence-
ment.

4. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-four.

Short title.

5. This Act may be cited as the Public Authorities Protection Act, 1893.

A light railway company, as defined by section 28 of the Light Railways Act, will be entitled to the protection afforded by the provisions of the Act in respect of acts done in intended execution of their statutory powers, and also in respect of charges of neglect or default in the execution of such powers or duties. A power conferred or duty imposed by an order under the Light Railways Act will, it is presumed, be a statutory power or duty. See the Light Railways Act, section 10, *ante*, p. 68.

This protection would seem not to apply to claims for injunctions to restrain some future course of action. See *Chapman v. Auckland Union*, 23 Q. B. D. 294, 308. It should be noted that section 1 refers to prosecutions as well as to actions.

STANDING ORDERS OF PARLIAMENT Orders. RELATIVE TO PRIVATE BILLS.

THE Order of the Light Railway Commissioners, when confirmed by the Board of Trade, has the effect of a private Act of Parliament. Section 10 of the Light Railways Act, *ante*, p. 68. The Standing Orders of Parliament applicable to private Bills authorising tramways and railways, though not binding on the Light Railway Commissioners, will to some extent govern their action in regard to Orders for light railways, and be followed by them so far as they may conveniently be applied to schemes for light railways. Indeed, the rules made under the Act are to a great extent founded upon the Standing Orders, the necessary modifications being made which appeared to be required by the circumstances. In the rules thus made, one (Rule 27 (*l*), *ante*, p. 94,) will be found incorporating by direct reference a requirement of the Standing Orders in the case of an application by an existing company. It has, therefore, been deemed necessary to print the Standing Orders (62—66) referring to this particular matter, and it has been thought convenient at the same time to give or refer to some others of those Orders which may be usefully considered in relation to applications for Orders to the Light Railway Commissioners. The Standing Orders are similar in both Houses; these printed are of the House of Lords.

Provisions relating to the Consents of Proprietors or Members of Companies already constituted.

See Light Railways Act, s. 11, *ante*, p. 68; Rule 27 (*l*), *ante*, p. 94; and Chap. IV., *ante*, pp. 34, 35.

62. In the case of every Bill, whether originating in this House, or in the House of Commons, promoted by a company already constituted by Act of Parliament, proof shall be given before the Examiner, before the second reading of the Bill in this House, that the following requirements have been complied with, and the Examiner shall report accordingly:—

Meeting of proprietors in case of Bills promoted by an existing company having statutory powers.

The Bill as introduced or proposed to be introduced into Parliament shall be submitted to the proprietors of such company at a meeting held specially for that purpose:

Such meeting shall be called by advertisement inserted once in each of two consecutive weeks in some one and the same newspaper published in London, Edinburgh, or Dublin, as the case may be, and in some one and the same newspaper of the county or counties in which the principal office or offices of the company is or are situate, and also by a circular addressed to each proprietor at his last known or usual address, and sent by post or delivered

Orders.

at such address not less than ten days before the holding of such meeting, enclosing a blank form of proxy, with proper instructions for the use of the same, and the same form of proxy and the same instructions, and none other, shall be sent to every such proprietor; but no such form of proxy shall be stamped before it is sent out, nor shall the funds of the company be used for the stamping of any proxies, nor shall intimation be sent as to any person in whose favour the proxy may be granted; and no other circular or form of proxy relating to such meeting shall be sent to any proprietor from the office of the company, or by any director or officer of the company so describing himself:

Such meeting shall be held not earlier than the seventh day after the last insertion of such advertisement, and may be held on the same day as an ordinary general meeting of the company:

At such meeting the said Bill shall be submitted to the proprietors aforesaid then present, and approved by proprietors present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented by the votes at such meeting, such proprietors being qualified to vote at all ordinary meetings of the company in right of such capital. The votes of proprietors of any paid-up shares or stock other than debenture stock not qualified to vote at ordinary meetings, whose interests may be affected by the Bill, if tendered at the meeting shall be recorded separately:

There shall be deposited in the office of the clerk of the Parliaments a statement of the number of votes, if a poll was taken, and of the number of votes recorded separately:

The names of the proprietors present in person at the meeting shall be recorded by the company. For this purpose the meeting, and any other consecutive meetings, whether general or special, and whether preceding or following it, shall be deemed to be the same meeting:

A poll may be demanded by any proprietor present in person at the meeting:

Separate
under-
takings.

So far as any such Bill relates to a separate undertaking in any company as distinct from the general undertaking, separate meetings shall be held of the proprietors of the company and of the separate undertaking, and the provisions of this Order applicable to meetings of proprietors of the company shall, *mutatis mutandis*, apply to meetings of proprietors of the separate undertaking.

Meeting of
members of
limited
company,
society, &c.,
in the case
of Bill
promoted
by a com-
pany, &c.

63. In the case of every Bill, whether originating in this House, or in the House of Commons, promoted by any company, society, association, or co-partnership formed or registered under the Companies Act, 1862, or constituted by Act of Parliament, Royal charter, letters patent, deed of settlement, contract of co-partnership, cost book regulations, or other instrument, and under the management of a committee or directors or trustees (and not being a company to which the preceding Order applies), proof shall be given before the Examiner, before the second reading of the Bill in this House, that the following requirements have been complied with, and the Examiner shall report accordingly.

In the case of a company formed or registered under the Companies Act, 1862 Orders.

The Bill as introduced or proposed to be introduced into Parliament shall be approved by a special resolution of the company.

In the case of any other such company, society, association, or co-partnership as aforesaid,

The Bill as introduced or proposed to be introduced into Parliament shall be consented to by a majority of three-fourths in number and (where applicable) in value of the proprietors or members of such company, society, association, or co-partnership present in person or by proxy, at a meeting convened with notice of the business to be transacted, and voting at such meeting, such consent to be certified in writing by the chairman of the meeting.

A copy of such special resolution or certificate of consent shall be deposited in the Office of the Clerk of the Parliaments.

The names of the proprietors or members present in person at the meeting shall be recorded by the company, society, association, or co-partnership. For this purpose the meeting, and any other consecutive meetings, whether general or special, and whether preceding or following it, shall be deemed to be the same meeting.

A poll may be demanded by any one proprietor or member present in person at the meeting, notwithstanding any provision to the contrary contained in any instrument constituting or regulating the company, society, association, or co-partnership.

If a poll is taken there shall be deposited in the Office of the Clerk of the Parliaments a statement of the number of votes.

So far as any such Bill relates to a separate class of proprietors or members of any company, society, association, or co-partnership, as distinct from the proprietors or members generally, such Bill shall be approved or assented to by the proprietors or members generally, and also by the separate class of proprietors or members, and the provisions of this Order applicable to the proprietors or members generally shall, *mutatis mutandis*, apply to the separate class of proprietors or members. Separate
classes of
proprietors.

This Order does not apply to existing railway companies, but Order 62 does.

64. In the case of every Bill brought from the House of Commons in which provisions have been inserted in that House empowering the promoters thereof, being a company already constituted by Act of Parliament, to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking or any part thereof, or to enter into agreements with any other company for the working, maintenance, management, or use of the railway or works of either company, or any part thereof, or to amalgamate their undertaking or any part thereof with any other undertaking, or to purchase any other undertaking or any part thereof, or any additional lands, or to abandon their undertaking or any part thereof, or to dissolve the said company, or in which any such provisions originally contained in the Bill have been materially altered in that House, or in which any such powers are conferred on any company not being the promoters Meeting of
proprietors
in the case of
certain Bills
originating
in the House
of Commons.

Orders. of the Bill, the Examiner shall report as to compliance or non-compliance with the following requirements.

The remainder of this Order is identical with Order 62.

Meeting of members of limited companies, &c., in the case of certain Bills originating in the House of Commons or there materially altered.

65. In the case of every Bill brought from the House of Commons, in which provisions have been inserted in that House empowering or requiring any company, society, association, or co-partnership formed or registered under the Companies Act, 1862, or constituted by Act of Parliament, Royal charter, letters patent, deed of settlement, contract of co-partnership, cost book regulations, or other instrument or instruments and under the management of a committee or directors or trustees, and not being a company to which the preceding Order applies, to do any act not authorised by the memorandum and articles of association of such company, or other instrument constituting or regulating such company, society, association, or co-partnership, or authorising or enacting the abandonment of the undertaking, or any part of the undertaking of any such company, society, association, or co-partnership, or the dissolution thereof, or in which any such provisions originally contained in the Bill have been materially altered in that House, or by which any such powers are conferred on any company, society, association, or co-partnership not being the promoters of the Bill, the Examiner shall report as to compliance or non-compliance with the following requirements :

In the case of a company formed or registered under the Companies Act, 1862,

The Bill as introduced or proposed to be introduced in this House shall be approved by a special resolution of the company.

In the case of any other such company, society, association, or co-partnership as aforesaid,

The Bill as introduced or proposed to be introduced in this House shall be consented to by a majority of three-fourths in number and (where applicable) in value of the proprietors or members of such company, society, association, or co-partnership present in person or by proxy at a meeting convened with notice of the business to be transacted, and voting at such meeting, such consent to be certified in writing by the chairman of the meeting.

A copy of such special resolution or certificate of consent shall be deposited in the office of the clerk of the Parliaments.

Provided always, that if by the terms of such special resolution or consent the Bill as introduced or proposed to be introduced into the House of Commons shall have been approved or consented to subject to such additions, alterations, and variations as Parliament may think fit to make therein, then it shall not be necessary for the purposes of this Order to obtain any further approval or consent in respect of any provisions inserted in the Bill in the House of Commons : Provided nevertheless that it shall be competent for the committee on the Bill, if they think fit, having regard to the nature and effect of such provisions, to require any further evidence of approval or consent to such provisions on the part of the shareholders or members of the company, society, association, or co-partnership.

The names of the proprietors or members present in person at the meeting shall be recorded by the company, society, association, or

co-partnership. For this purpose the meeting, and any other consecutive meetings, whether general or special, and whether preceding or following it, shall be deemed to be the same meeting.

Orders.

A poll may be demanded by any one proprietor or member present in person at the meeting, notwithstanding any provision to the contrary contained in any instrument constituting or regulating the company, society, association, or co-partnership.

If a poll is taken, there shall be deposited in the office of the Clerk of the Parliaments a statement of the number of votes.

So far as any such Bill relates to a separate class of proprietors or members of any company, society, association, or co-partnership as distinct from the proprietors or members generally, such Bill shall be approved or assented to by the proprietors or members generally, and also by the separate class of proprietors or members; and the provisions of this Order applicable to the proprietors or members generally shall, *mutatis mutandis*, apply to the separate class of proprietors or members.

Separate classes of proprietors.

66. When any Bill as introduced into Parliament or as amended or proposed to be amended on petition for additional provision contains a provision authorising any company incorporated by Act of Parliament, or any class of holders of share or loan capital in any such company, to subscribe or to alter the terms or conditions of any subscription towards or to guarantee or to raise any money in aid of the undertaking of another company (which Bill is not brought in by the company so authorised, or of which such company is not a joint promoter), proof shall be required before the Examiner before the second reading in this House, if such provision is contained in the Bill as introduced into Parliament, that the company or the class of holders of share or loan capital so authorised has consented to such subscription, alteration, guarantee, or raising of money, at a meeting of the proprietors of the company, or of any such class of holders of share or loan capital, as the case may be, held specially for that purpose, in the same manner and subject to the same provisions as the meeting directed to be held under Order 64; and in case such provision is contained in the Bill as introduced into Parliament, that the notices for the Bill state the specific sum (if any) proposed to be subscribed, or guaranteed, or raised, or the alteration of the terms or conditions of the subscription, as the case may be, and stating that the consent of the company or of such class of holders of share or loan capital has been given as aforesaid, have been published once in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and in the county newspapers in which the notices for the Bill were published for two successive weeks during the six weeks immediately preceding the presentation of such petition for additional provision.

Proof to be required before Examiner of consent of proprietors of company incorporated by Act of Parliament to sum authorised to be raised in aid of undertaking of another company.

Petition for additional provision.

In any case in which such consent has been given, it shall not be necessary to submit the Bill in respect of such provision as aforesaid to the approval of a meeting, to be held in accordance with Order 64.

Further consent unnecessary.

Orders.

STANDING ORDERS OF PARLIAMENT.

DEPOSITS OF MONEY.

Five per cent. or four per cent. of estimate to be deposited.

57. In the case of a railway Bill, tramway Bill, or subway Bill authorising the construction of works by other than an existing railway company, tramway company, or subway company incorporated by Act of Parliament, possessed of a railway, tramway, or subway already opened for public traffic, which has during the year last past paid dividends on its ordinary share capital, and which does not propose to raise under the Bill a capital greater than its existing authorised capital, a sum not less than five per cent. on the amount of the estimate of expense (or in the case of substituted works, on the amount by which the expense thereof will exceed the expense of the works to be abandoned), and in case of all Bills other than railway Bills, tramway Bills, and subway Bills, a sum not less than four per cent. on the amount of such estimate or of such excess as aforesaid, shall, previously to the fifteenth day of January, be deposited with the Paymaster-General for and on behalf of the Supreme Court of Judicature in England if the work is intended to be done in England, or with the Paymaster-General for and on behalf of the Supreme Court of Judicature in England or the Court of Exchequer in Scotland if the work is intended to be done in Scotland, or with the Accountant-General of the Supreme Court of Judicature in Ireland if the work is intended to be done in Ireland.

In case of a new company the order authorising a light railway may contain provisions requiring the company to make a deposit. Light Railways Act, s. 11, sub-sect. (k), *ante*, p. 69. See also p. 44, *ante*.

Cases in which declaration may be deposited in lieu of money.

58. Where the work is to be made wholly or in part by means of funds, or out of money to be raised upon the credit of present surplus revenue belonging to any society or company or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, such parties being the promoters of the Bill, a declaration stating those facts and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and showing the actual surplus of such funds or revenue, after deducting the funds required for purposes authorised by any Act or Acts of Parliament, and also the funds which may be required for any other work to be executed under any Bill in the same session, and given under the common seal of the society or company, or under the hand of some authorised officer of such directors, trustees, or commissioners, may be deposited, and in such case no deposit of money shall be required in respect of so much of the estimate of expense as shall be provided for by such surplus funds.

As to clause to be inserted by the committee for imposing penalty if line be not opened, see Standing Order 114, and as to clause providing for impounding deposit as security for the completion of the line, Standing Order 115, and for application of deposit, Standing Order 116.

STANDING ORDERS OF PARLIAMENT

Orders.

AS TO INSERTING CLAUSES FOR MAXIMUM RATES OF CHARGE, see Standing Orders 119, 123 *a*, and see *ante*, pp. 23, 124 ; and notes to Order 132, *infra*.

132. The following clause shall be inserted in all railway Bills and tramway Bills :

Nothing herein contained shall be deemed or construed to exempt the railway [tramway] by this Act [or the said recited Acts] authorised to be made from the provisions of any general Act relating to railways [tramways] now in force, or which may hereafter pass during this or any future Session of Parliament, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges authorised by this Act [or by the said recited Acts].

Clauses as to railway and tramway not to be exempt from any general Act.

See the Light Railways Act, s. 12 (2), *ante*, p. 70, and see *ante*, pp. 69, 70. In fixing maximum rates it would seem advisable to insert a provision in the Order expressly stating that they were subject to revision by the Commissioners, although, even in the absence of such provision, the Commissioners may on the application of any authority or person amend their Order in this respect. Section 24 (*a*), (*b*), *ante*, p. 78.

STANDING ORDERS OF PARLIAMENT.

29. On or before the thirtieth day of November a copy of so much of the said plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, or in which any lands or houses are situate which may be taken compulsorily, or on which an improvement charge may be imposed, or which are rendered liable to the imposition of an improvement charge, together with a copy of so much of the book of reference as relates to such parish, shall, subject to the provisions of section 17 (7) of the Local Government Act, 1894, be deposited with the parish clerk of each such parish in England, or, in the case of any extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, or in case of any place within the limits of the metropolis, as defined by the "Metropolis Management Act, 1855," with the clerk of the vestry of each parish in Schedule A., and with the clerk of the district board of parishes in Schedule B. of the said Act, with the clerk of the parish council of each such parish in Scotland, and in Royal burghs with the town clerk, and with the clerk of the union within which such parish is included in Ireland.

Deposit of parish plan, section, and book of reference with parish clerks, &c.

This Standing Order is equivalent to Rule 3 of the Light Railways Act *ante*, p. 88, as regards parochial authorities. Section 17 (7) of the Local Government Act, 1894, enacts that "all documents required by statute or by Standing Orders of Parliament to be deposited with the parish clerk of

Orders. a rural parish, shall, after the election of a parish council, be deposited with the clerk, or, if there is none, with the chairman, of the parish council, and the enactments with respect to the inspection of, and taking copies of, and extracts from, any such documents shall apply as if the clerk or chairman, as the case may be, were mentioned therein."

The statute 7 Will. 4 & 1 Vict. c. 83, compels the parish and other clerks, &c., to take the custody of and permit inspection of, and copies to be taken of, plans, books, &c., deposited with them under any Standing Order of either House by any persons interested. The Light Railway Commissioners may by their Order authorising a light railway scheme make similar provision for the preservation of plans, books of reference, &c., and for their inspection and for taking of copies after the scheme comes into operation. See *ante*, p. 100; section 10 of the Light Railways Act, *ante*, p. 68; section 11 (*a*), *ante*, p. 68; section 28, *ante*, p. 81; section 11 (*m*), *ante*, p. 69; and also sections 8 and 9 of the Railways Clauses Act, 1845, Appendix, *ante*, p. 101, and section 34 of the Railway Companies' Powers Act, 1864, *ante*, p. 272.*

* PUBLISHERS' NOTE.—The Standing Orders may be obtained from Messrs. SHAW & SONS, Fetter Lane, London, E.C.

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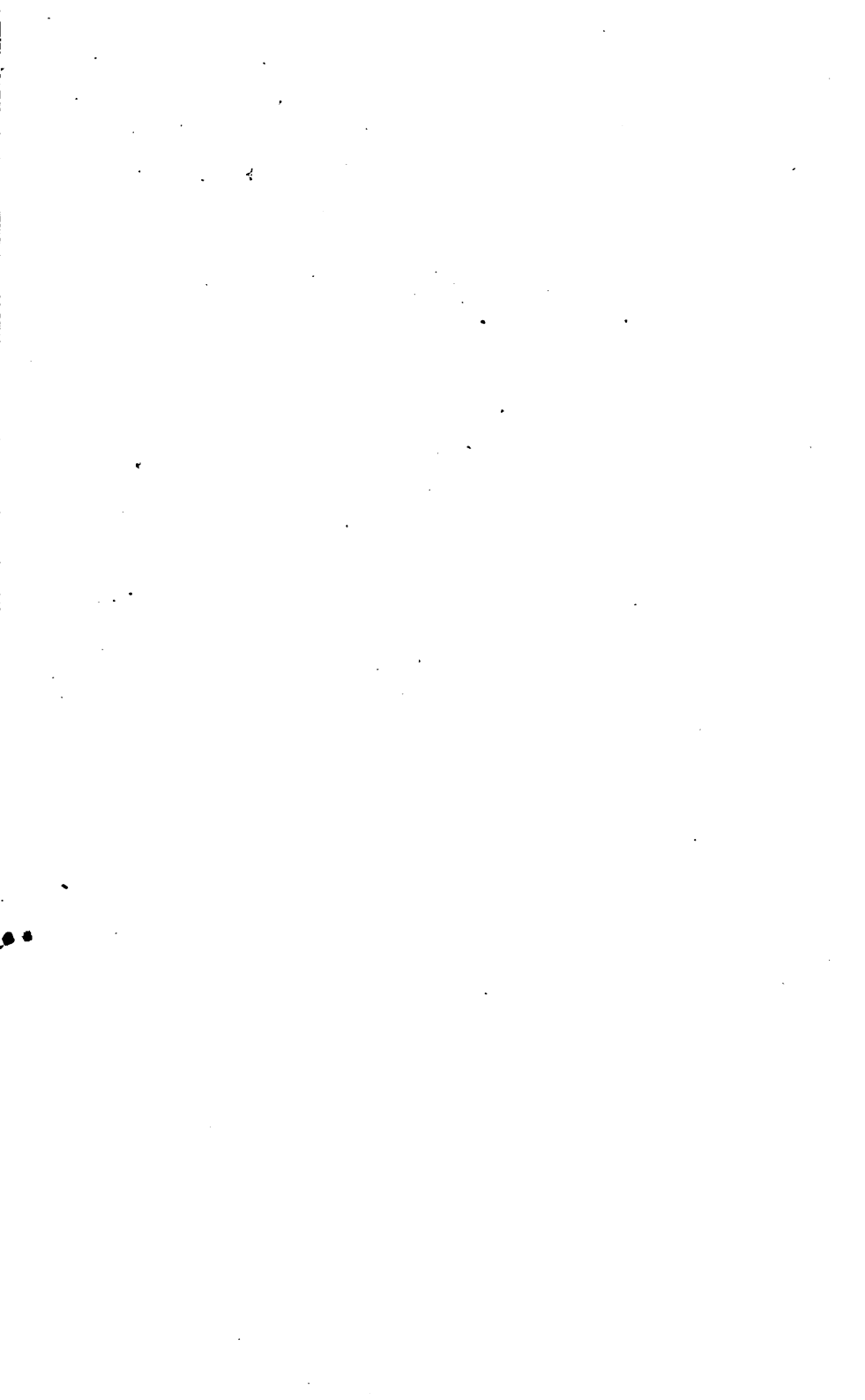
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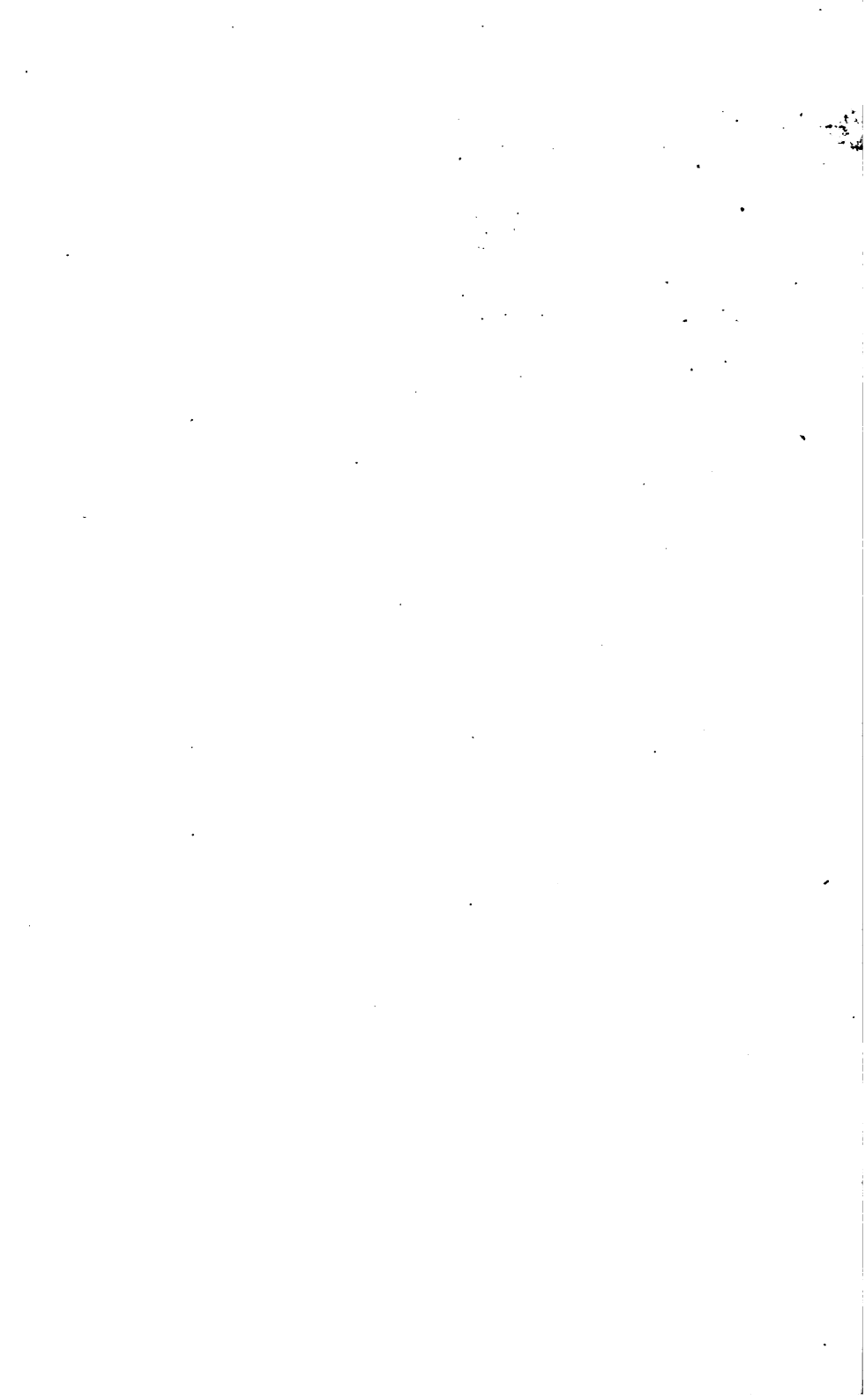
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